

ENF 7 Investigations and Arrests

Active Operational Bulletins (OBs)

DISTRIBUTION LIMITED TO CIC AND THE CBSA

Most recent date of changes: 2014-09-04

Updates to chapter

1 What this chapter is about

2 Program objectives

2.1 CIC and CBSA objectives

2.2 Officer objectives

3 The Act and Regulations

3.1 Forms

4 Instruments and delegations

5 CBSA policy

5.1 Policy on investigations

5.2 Strategy and setting priorities

5.3. Priority 1: Security Threat

5.4. Priority 2: Organized Crime or Crimes Against Humanity

5.5. Priority 3: Serious Criminality / Health

5.6. Priority 4: Criminality

5.7. Priority 5: Non-criminal

5.8 Authority as peace officers

5.9 Community and police liaison

5.10 Police assistance

5.11. Information on previously deported persons (PDP) on the CPIC database

5.12 Investigations by two or more officers

5.13 Use of force

5.14 Special entry warrants

5.15 Authority to issue a Special Entry Warrant [IMM 5430E]

5.16 Policy on forcible entry

5.17 Life span of Special Entry Warrants

5.18 Clarification of "dwelling-house"

5.19 Notebook security

6 Definitions

7 Procedure: Overview of general investigations procedures

7.1 Conducting an administrative review (Specific to CIC employees)

7.2 CIC referrals to CBSA inland enforcement for investigation (non-warrant cases)

7.3 CIC referral to CBSA inland enforcement for possible arrest

8 Procedure: Information sources

9 Procedure: Validating information

9.1 Determining citizenship

9.2 Verifying permanent resident status

9.3 Enforcement Information Index lookouts (EII) on FOSS for Interpol cases

9.4 Communicating adverse information about a permanent resident to a Citizenship office

10 Procedure: Prioritizing information

11 Procedure: Risk assessment

12 Procedure: Police assistance

12.1 The Role of CBSA Criminal Investigations and the Royal Canadian Mounted Police

12.2 United States Police Agencies / Courts

12.3 Canadian Police Information Centre (CPIC) database

12.4 Liaison with the RCMP and MIO/IPM on queries related to criminals

12.5 When police assistance may be required

12.6 Transitional procedures for immigration offences

13 Procedure: Interviewing

13.1 When a person makes an application under the Act

13.2 When an application is not made under the Act

13.3 Interviewing techniques

13.4 Questioning on private premises

13.5 Counselling to leave Canada

14 Procedure: Taking notes

14.1 Notes to file

14.2 General rules for note-taking

14.3 Officer's notebook

14.4 Using the officer notebook at an admissibility hearing, court or other legal proceeding

14.5 Statutory declarations

15 Procedure: Arrests

15.1 Officer responsibilities for arrests under the *Criminal Code*

15.2 False arrest

15.3 Arrests with a warrant

15.4 Completing Form IMM 0420B (Warrant for Arrest)

15.5 Entering warrants into FOSS

15.6 Transferring warrants onto the CPIC database

- 15.7 Sending warrant packages to the WRC
- 15.8 Executing or cancelling an immigration warrant
- 15.9 Referral of warrant cases from the CPC Vegreville
- 15.10 Arrests without a warrant
- 15.11 Arrest of a person named in a security certificate (with or without a warrant)
- 15.12 Arrest of minors
- 16 Procedure: Arrest and detention by peace officers under IRPA
 - 16.1 Arrest and detention with a warrant by a peace officer
 - 16.2 Arrest and detention without a warrant by a peace officer
 - 16.3 Procedures following arrest and detention
 - 16.4 Procedures when an arrest is not made
 - 16.5 Seizure authorities of a peace officer under IRPA
- 17 Procedure: Making an arrest
 - 17.1 Entering a notice of arrest in FOSS
 - 17.2 Obligations under the *Canadian Charter of Rights and Freedoms* toward persons being arrested
 - 17.3 Notice of rights conferred by the *Vienna Convention*
 - 17.4 Detention after the arrest
- 18 Procedure: Arresting a person in private premises
 - 18.1 Arresting a person where permission to enter a dwelling house is granted
 - 18.2 Special Entry Warrants (no permission to enter a dwelling house)
 - 18.3 General procedures for issuing Special Entry Warrants
 - 18.4 Issuing a Special Entry Warrant in writing (in person)
 - 18.5 Requesting a Special Entry Warrant by telephone or other electronic means
 - 18.6 Reporting requirements after issuing a Special Entry Warrant
- 19 Procedure: Searching
 - 19.1 Searching arrested and detained persons
 - 19.2 General rules for searches
 - 19.3 Searching Canadian citizens
 - 19.4 Searching a private residence
 - 19.5 Securing a travel document on private premises
- 20 Procedure: Seizure
 - 20.1 When to seize documents
 - 20.2 Documents seized by other agencies
 - 20.3 Background information document
 - 20.4 Protecting evidence
 - 20.5 Disposing of fraudulent documents
 - 20.6 Returning seized documents

21 Procedure: Fingerprinting and photographing

21.1 Person makes an application under the Act

21.2 Person has been arrested, detained or the subject of a removal order

21.3 Taking a set of fingerprints

21.4 Use of fingerprint forms

22 Procedure: Detention

23 Procedure: Enforcement incident reporting requirements

24 Procedure: Report Writing

24.1 Inadmissibility provisions under the Act

24.2 Investigator report

24.3 Preparing an A44(1) report

24.4 Report requirements

24.5 Narrative memorandum

24.6 Reporting persons who exhibit violent behaviour

24.7 Reporting procedures for unaccompanied minors

24.8 Young offenders

24.9 Determining if an offence is within the *Contraventions Act*

25 Procedure: Notification to the Support System for Intelligence (SSI)

26 Procedure: Diplomats, consular officers and representatives or officials of a foreign country, of the United Nations and of international organizations

26.1 Violations of the Act and Regulations

26.2 Forwarding information to Inland Enforcement Division, NHQ

27 Testifying

27.1 Format for presenting evidence

27.2 Conduct of officers as witnesses

28 Procedure: Handling alleged war criminals

29 Procedure: Requesting the Minister's opinion

30 Procedure: Intervention, cessation and vacation

30.1 Preliminary investigation procedures

30.2 Intervention

30.3 Cessation of refugee protection status

30.4 Vacation of refugee protection status

31 Procedure: Information exchange with other parties

32 Procedure: Legality of actions

Appendix A – Authorization to have the authority and powers of a peace officer

Appendix B – Letter to compel persons to appear for examination

Appendix C – Letter to compel foreign nationals to appear for an interview with CSIS

Distribution limited to CIC and the CBSA

Updates to chapter

Listing by date:

2014-09-04

Section 24.5: Instructions regarding the delegated authority to refer the report to an admissibility hearing have been updated.

2013-09-20

Sections 3, 8 and 13 have been updated to reflect the new subsections 16(1.1) and 16(2.1) that have been added to the IRPA as of the coming into force of the *Faster Removal of Foreign Criminals Act*.

Included the compellability letter for examinations pursuant to subsection 16(1.1) in Appendix B and the compellability letter for the interview with CSIS **pursuant to subsection [16(2.1)] in Appendix C**.

2013-05-30

Amendments to reflect requirement for certain foreign nationals to provide biometric information when applying for a temporary resident visa, study permit or work permit.

2013-02-04

Balanced Refugee Reform Act amendments authorising the issuance of warrants for individuals unlikely to appear at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2) – modified sections 15.3, 15.8 and 15.9.

2010-09-23

The warrant and detention forms (IMM 420, 421, 5428, 5429, 5430) have been converted to the CBSA numbering system (BSF 499, 304, 537, 538, 539)

2010-06-07

Section 18.2 concerning requirements for forcible entry has been updated.

2010-01-29

- Minor wording corrections completed throughout chapter to better reflect policy intentions.
- Use of Force related statements deleted as replaced by Arming Use of Force Policy.
- Special Entry Warrant procedures clarified.
- Sections 5.2 – 5.7 – Wording for priorities was updated to better align with overall Inland Enforcement program priorities.
- Sections 5.19/14.3 – Note added to advise this section will be superseded by revisions to the CBSA Notebook Policy.
- Sections 7.1 – 7.3 – Language changed to reflect current policy wherein regional Inland Enforcement offices become primary contact for CIC referrals.

- Sections 12 – 12.1 – Language changed to reflect the role of CBSA CID in criminal prosecutions.
- Section 12.2 – Created to describe interaction with USA police agencies and courts.
- Section 14.1 – Language updated to emphasize importance of good notes.
- Section 15.3 – Section rewritten to include sections on 'Warrants for arrest and the Port of Entry' and 'Diligence in issuing Warrants'.
- Section 15.5 – References added for the use of remarks section of warrant screen and use of AOC and Convictions options.
- Section 15.6 – Language updated to reflect proper use of A59 plus warrant.
- Section 15.8 – Amended to reference ENF 13 for standardized warrant cancellation policy.
- Sections 15.9 – 15.12 – Language updated to more accurately reflect procedures on warrant referrals and security certificate arrests.
- Section 18 – Language changed to reflect current CBSA policy.
- Section 24.5 – Minor changes to reflect current delegated authorities on Long Term Permanent Resident reporting.
- Section 26.2 – Changes made to reflect current reporting instructions for foreign mission staff.
- Appendix B - Appendix has been removed.

2006-04-25

- Section 5.8 – Authority as peace officers
 - The *Canada Border Services Agency Act* outlines changes to the definition of peace officers in the *Criminal Code*. This section has been modified to reflect the inclusion of officers enforcing the IRPA as peace officers in the *Criminal Code*.
- Section 15 – Procedures: Arrest—Term changed from arrests to detentions;
- Facsimile number for NHQ Inland Enforcement was updated;
- The term "Immigration Warrant Response Centre" was replaced with "Warrant Response Centre" throughout the text;
- Changes were made to the WRC Document Checklist (now WRC Warrant Package Checklist) form in Appendix B;
- Where appropriate, "Agency" has been substituted for "Department" to reflect the accurate functional authority.
- Other minor changes were also made.

2005-12-30

Changes were made to reflect the transition from CIC to the CBSA:

- The procedures that a CIC officer must follow to contact a CBSA office when receiving a call from a peace officer requiring assistance for an arrest without warrant have been updated in Section 15.2;
- E-mail addresses and postal addresses were updated;
- References to the CRS (Citizenship Registration System) were changed to GCMS (Global Case Management System);
- The term "delegated officer" was replaced with "Minister's delegate" throughout the text;
- References to "departmental policy" were eliminated; and
- References to CIC and CBSA officers and the C&I Minister and the PSEP Minister were made where appropriate;

Other minor changes were also made.

2003-05-05

Section 25.3 - Removing a person from the PDP database.

A new section provides officers with details on the removal of PDP information from the CPIC-PDP database after the completion of an A44(1) report.

2003-01-03

Please note that various amendments have been made to the Investigations and Arrests manual (ENF 7). The following revisions include:

Section 4: A listing of the officers that have been authorized as having the authority and powers of a peace officer pursuant to A138(1) of IRPA is in Appendix A.

Section 9.4: Procedures to communicate adverse information of permanent residents to a citizenship office.

Section 12.7: Procedures after an officer is assaulted or obstructed during the course of their duties.

Section 12.8: The application of s.494 of the *Criminal Code* for citizen's arrest.

Section 12.9: Transitional provisions for warrants issued prior to June 28, 2002 for SIO determination.

Section 15.7: The warrant checklist for sending a warrant to the Immigration Warrant Response Centre (IWRC) is found in **Appendix B**.

Section 15.8 and 17.1: Clarification of the requirements for the completion of a Notice of Arrest (IMM 1285) in all cases where a person has been arrested with or without a warrant.

Section 16: New guidelines addressing the authority of peace officers to arrest and detain under IRPA when an immigration officer is unable to provide an "in person" response. Section 16 also establishes guidelines when CIC receives a call from a law enforcement agency during after-hours.

Section 24: Updated procedures for enforcement incident reporting.

Note: Wallet sized laminated Charter of Rights cards (IMM 5537B) have been revised and will be made available to the Regions as of February 2003.

DISTRIBUTION LIMITED TO CIC AND THE CBSA

1 What this chapter is about

This chapter focuses on an officer's responsibilities and authorities once there is information to believe that a permanent resident or a foreign national has violated the *Immigration and Refugee Protection Act*. In particular, this chapter describes how to investigate and arrest persons who are in Canada and do not comply with the requirements of the Act and Regulations. Officers engaging in investigations must recognize the necessary principles to identify, locate, apprehend, and formally report permanent residents and foreign nationals.

Officers should become aware of all policies and procedures that will assist them to accurately complete the various stages of an investigation to its conclusion.

2 Program objectives

2.1 CIC and CBSA objectives

The Act outlines the Canadian immigration policy objectives. These objectives as they relate to the activity of investigations are:

- to protect the health and safety of Canadians;
- to maintain the security of Canadian society;
- to promote international justice and security by fostering respect for human rights; and
- to deny access to Canadian territory to persons, including refugee claimants, who are criminals or security risks.

2.2 Officer objectives

The basic objectives of an officer engaging in investigations are:

- to determine violations pursuant to the Act and Regulations, by understanding the legislative and regulatory provisions, including the authorities as an immigration and peace officer;
- to take appropriate steps to plan and conduct an investigation;
- to promote the effective and efficient application of the Act and the immigration program through the development, liaison and maintenance of contacts;
- to provide technical service, guidance and training to law enforcement agencies, the courts, government and non-government agencies;
- to identify, collect, analyse and disseminate information from a variety of sources concerning security, illegal immigration, health risks, criminality, organized crime, rackets, terrorism, human or international rights violations (including war crimes), espionage and subversive organizations;
- to investigate, identify, locate and formally report permanent residents and foreign nationals who are in violation of the Act and Regulations;
- to arrest and detain permanent residents, protected persons and foreign nationals who are believed to be inadmissible, and who either pose a danger to the public, or would not

likely appear for examination, admissibility hearing, removal from Canada, a proceeding that could lead to the making of a removal order or on identity grounds;

- to take appropriate action by gathering the necessary information, preparing and submitting a report, and assisting the hearings officer as required;
- to carry out an officer's duties safely and securely; and
- to act fairly, according to law and in good faith.

3 The Act and Regulations

With the exception of when a permanent resident or foreign national makes an application under the *Immigration and Refugee Protection Act*, the Act is silent on the actual activities of an investigation. The duties of an officer engaging in investigations are obtained from certain authorities that the Act provides to officers and the Minister's delegate for arrest, detention, reporting, and removal.

The Act confers certain powers related to enforcement activities on officers and the Immigration Division of the Immigration and Refugee Board, hereinafter, "the Board". To determine whether a violation has been committed and to follow through with enforcement actions, officers must be aware of their responsibilities, authorities, and limits on their powers as peace officers while performing immigration duties.

The following are legislative and regulatory authorities contained within the *Act and Regulations* that should assist officers when conducting an investigation.

For information about:

Immigration and Refugee Board (the Board)

Foreign national

Permanent resident

Protected person

Examination - where an application is made under the Act

Application under the Act includes an application in writing, seeking to enter Canada or making a refugee protection claim

Requirement of certain foreign nationals who make an application for a temporary resident visa, study permit or work permit to submit biometric information.

Countries and territories whose nationals are required to provide biometric information.

Exemptions from the requirement to provide biometric information.

Application under the Act - obligation to answer truthfully

Application under the Act - obligation to appear for an examination

Relevant evidence - when a foreign national makes an application under the Act - includes photographs, fingerprints, and medical examination upon request.

Application under the Act- obligation interview with CSIS and must answer truthfully all questions put to them during the interview.

Relevant evidence - when a permanent resident or a foreign national is arrested, detained or the subject of a removal order - includes photographs, fingerprints and other information to establish identity or compliance with the Act

Report on inadmissibility

Arrest and detention with a warrant

Arrest and detention without a warrant

Arrest and detention without a warrant for identity

Authority as a peace officer

Seizure of transportation, document or other thing

Refer to:

[A2\(1\)](#)

[A2\(1\)](#)

[A2\(1\)](#)

[A95\(2\)](#)

[A15\(1\)](#)

[R28](#)

[A11.1](#)

[R12.1\(1\)](#)

[R12.1\(2\)](#)

[A16\(1\)](#)

[A16\(1.1\)](#)

[A16\(2\)](#)

[A16\(2.1\)](#)

[A16\(3\)](#)

[A44\(1\)](#)

[A55\(1\)](#)

[A55\(2\)\(a\)](#)

[A55\(2\)\(b\)](#)

[A138\(1\)](#)

[A140\(1\)](#)

Authority to administer oaths and to take and receive evidence under oath	<u>A141</u>
Duties of a peace officer to execute warrants and orders	<u>A142</u>
Authority to execute warrants or detention orders made under the Act	<u>A143</u>
Immigration offences	
Organizing entry into Canada	<u>A117</u>
Trafficking in persons	<u>A118</u>
Disembarking persons at sea	<u>A119</u>
Offences related to documents	<u>A122</u>
Contravention of the Act	<u>A124</u>
Counselling misrepresentation	<u>A126</u>
Misrepresentation or withholding material facts	<u>A127</u>
Offences relating to officers	<u>A129</u>
Possession of property obtained by crime from illegal activity under the Act	<u>A130</u>
Counselling a person to commit any offence under the Act - other than an offence related to misrepresentation or refusal to participate in a proceeding.	<u>A131</u>

3.1 Forms

The forms required are shown in the following table.

Form title	Form number
Warrant for Arrest	<u>BSF 499</u>
Order for Detention	<u>BSF 500</u>
Notice of Rights Conferred by the Vienna Convention and to the Right to be Represented by Counsel at an Admissibility Hearing	<u>IMM 0689B</u>
Notice of Arrest under section 55 of IRPA	<u>IMM 1285B</u>
Declaration	<u>IMM 1392B</u>
Request to Amend Immigration Record of Landing or Confirmation of Permanent Residence	<u>IMM 1436B</u>
Authority to Release from Detention	<u>IMM 5023B</u>
Investigator Report	<u>IMM 5040B</u>
Property Receipt	<u>IMM 5041B</u>
Notice of Mail Seizure under subsection 140(1) of IRPA	<u>IMM 5079B</u>
A44(1) and A55 Highlights - Inland Cases	<u>IMM 5084B</u>
Investigator's Notebook	<u>IMM 5104B</u>
Search	<u>IMM 5242B</u>
Enforcement Incident Report (EIR)	<u>IMM 5381E</u>
Quarterly Incident Report	<u>IMM 5383B</u>
Background Information Document	<u>IMM 5417B</u>
Request for Special Entry Warrant (via telephone or other electronic means)	<u>BSF 537E</u>
Request for Special Entry Warrant (sought in person, in writing)	<u>BSF 538</u>
Special Entry Warrant	<u>BSF 539E</u>
Charter of Rights Card	<u>IMM 5537B</u>

4 Instruments and delegations

Pursuant to ss. 6(1) of IRPA, both the Minister of Citizenship and Immigration (C&I) and Minister of Public Safety (PS) have designated specific persons as officers to carry out any purpose of any provision of IRPA and have specified the powers and duties of the

officers so designated. In addition, [A6\(2\)](#) authorizes that anything that may be done by the Minister under the Act and Regulations may be done by a person that the Minister authorizes in writing. This is referred to as a delegation of authority.

The Designation of Officers and Delegation of Authority documents define who has the authority to perform specific immigration functions. These instruments can be found in [IL 3](#).

The instruments are to be read in conjunction with the Designated/Delegated Authority Modules and the regional, national, or international annexes in accordance with the physical location of the officer.

Officers authorized to have the authority and powers of a peace officer

See [Appendix A](#) for the list of positions authorized by the Director General of the Enforcement Branch, pursuant to [A138\(1\)](#) who have the authority and powers of a peace officer (including those set out in sections 487 to 492.2 of the *Criminal Code*) to enforce the *Immigration and Refugee Protection Act*, including any of its provisions with respect to the arrest, detention or removal from Canada of any person.

5 CBSA policy

5.1 Policy on investigations

Investigations should be initiated on the basis of information and circumstances that would lead an officer to believe that there has been a violation of the Act and Regulations.

Investigations must be based on:

- sound research and analysis;
- local objectives and strategies;
- the support of good intelligence, information and specialized contacts;
- strong police agency relations; and
- community awareness, understanding and support.

5.2 Strategy and setting priorities

The officer must be able to determine how to use information to attain the overall objectives of the immigration program. For example, if "danger to public health" violations are a high priority, this should influence the priority that an officer places on information.

The following prioritization framework has been developed to ensure that cases involving the highest degree of risk are not delayed in their progression through the enforcement stream.

Priority 1. Security Threat

Priority 2. Organized Crime or Crimes Against Humanity

Priority 3. Serious Criminality/Health

Priority 4. Criminality

Priority 5. Non-criminal

Point at which cases will be prioritized/re-prioritized

An officer will determine and record an individual's priority ranking every time a new client or enforcement case is created within the enforcement database(s).

The priority-ranking process should be repeated every time an officer deals with an enforcement case because an individual's threat level may change, causing them to move up the priority scale over time.

In addition to assessing priority upon the creation of a new case/client in the database, the minimum number of acceptable points where an individual's priority must be re-assessed is:

1. Upon discovery of specific allegations involving criminality during an investigation;
2. Conclusion of court tracking;
3. Individual commences serving a sentence;
4. Detention/Detention review initiated;
5. Conclusion of any hearings activity;
6. Removal concluded; and
7. Conclusion of a case.

A person should always be ranked at their highest risk level. A person's priority ranking may only be decreased where a mistake was made previously or new information comes to light (such as being pardoned for an offence). Reasons for such changes must always be documented in a note to file.

Priority-ranking criteria

In order to ensure that persons are ranked consistently and objectively, the following tests are to be used to determine an individual's priority ranking by a CBSA officer. Each of the tests is self-contained. They are not meant to be used in tandem with one another. A person meeting the criteria in multiple tests should always be ranked at the **highest** priority.

5.3 Priority 1: Security Threat

Definition:

This category is comprised of persons who have been found inadmissible or are suspected of being inadmissible to Canada for being a danger to Canadian society or the security of Canada as described in [A34](#), as well as those who are the subject of a certificate under subsection [A77\(1\)](#).

Criteria:

When ranking an individual as a security risk, an officer must:

- have evidence that a certificate has been signed by the Minister of Citizenship, Immigration and Multiculturalism (C&I) and the Minister of Public Safety under subsection [A77\(1\)](#) against a permanent resident or foreign national who is inadmissible on grounds of security, violating human and international rights, serious criminality or organized crime.
- have information that may support a finding of inadmissibility under section [A34](#) for acts which pose a threat to Canadian society or to the security of Canada.

5.4 Priority 2: Organized Crime or Crimes Against Humanity

Definition:

This category is designed to capture individuals who share certain characteristics, but do not meet the definitions of category 1 or 3. This includes such elements as:

- **Human or international rights violations**

Allows officers to identify **persons who have been found inadmissible for** human or international rights violations as described in [A35](#).

- **Organized crime**

Allows officers to identify **persons who have been found inadmissible for** being a member of organized crime or engaging in transnational crime such as people smuggling, trafficking in persons, or money laundering as described in [A37](#).

Criteria:

When ranking an individual as a threat/high risk, officers must:

- have reasonable grounds to believe that a case warrants a priority 2 ranking specific to one of the elements identified above;
- have information that would support a finding of inadmissibility under section [A35](#) or [A37](#) for acts which pose a threat to Canadian society or to the security of Canada. Officers should rank the individual as priority 2.

5.5 Priority 3: Serious Criminality / Health

Definition:

This category consists of:

- persons who have been **convicted of an offence in Canada** for which the maximum possible sentence is 10 years or more; and;
- persons for whom there are reasonable grounds to believe that they **have been convicted of, or committed, an offence outside Canada** that if committed in Canada would constitute an offence for which the maximum sentence is 10 years or more.
- Individuals who are the subject of an authority to proceed issued by the Minister under section 15 of the *Extradition Act*.

Any use of this category must always be accompanied by detailed notes on the subject's file explaining the reasons for the officer's decision.

- Individuals who through their behaviour or the state of their psychological and physical health are considered to pose a serious threat to Canadian society or to their own physical well being.

Furthermore, the offence(s) must have involved at least one of the following elements:

- weapons;
- violence against the person;
- sexual assault;
- narcotics or drugs;
- acts against children.

Each of the elements listed represents a number of offences considered to be serious. Listing elements, instead of naming individual offences, ensures that there are no offences that will be inadvertently left out and eliminates the need to continuously update the policy as changes to the *Criminal Code* or other Acts of Parliament occur.

"Violence against the person" refers to offences that involve actual physical harm to another person and does not include such things as "psychological violence" or threats of physical violence.

"*Sexual assault*," "*narcotics*," "*drugs*," and "*acts against children*" refer only to offences punishable by way of indictment.

Criteria:

When categorizing an individual on grounds of serious criminality:

- Officers **must** first determine whether or not the person is described under A36(1)(a) or A36(1)(b). **Officers should not be concerned with the actual sentence that was imposed by the court—only with the maximum imposable sentence.** If this first criterion is met, then, the officer should determine whether or not the offence involves any of the listed elements.
- When determining whether or not any of the elements were involved, officers may not always need to look at the circumstances surrounding the commission of the offence but only at the actual offence for which the person was convicted. Normally, the name of the offence should be enough to determine whether any of the above elements are captured. Otherwise, officers may have to refer to additional information such as police reports.
- If a person has been convicted of more than one offence, officers should rank the person according to the most serious conviction. The conviction for which the person is ranked must meet both the sentence threshold requirement (of at least 10 years) and the elements requirement.

Alternatively;

- Officers **must** determine whether or not the person is described under A36(1)(c). If this is the case, then the officer must determine, as above, whether or not the offence(s) involved any of the listed elements.
- Officers should take into account the behavior of the person, the psychological and physical health, the seriousness of offences a person is charged with, the number and seriousness of multiple convictions a person has, and any other relevant information. Officers must clearly document their thought process in arriving at such a conclusion

5.6 Priority 4: Criminality

Definition:

This category is intended to capture all criminals not described in "Serious criminality".

Criteria:

When describing an individual on grounds of criminality, officers must have evidence that:

- the person was **convicted in Canada** of an offence described in A36(1) that does not meet the element threshold requirement set out in Priority 3 – Serious criminality); or
- the person was **convicted in Canada** of an offence under an Act of Parliament punishable by way of indictment or two offences not arising out of a single occurrence under A36(2)(a); or
- the person was **convicted outside Canada** of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament or of two offences not arising out of a single offence that, if committed in Canada, would constitute offences under an Act of Parliament under A36(2)(b); or
- the individual is a person who, there are **reasonable grounds to believe, has committed, outside Canada**, an act that is an offence under the laws of the place where the act occurred and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament under A36(2)(c) or;

- the person **commits, on entering Canada**, an offence under an Act of Parliament under A36(2)(d).

Criminality need not be based on indictable offences. This category may also include summary conviction offences (under the circumstances described above).

5.7 Priority 5: Non-criminal

Definition:

This category describes persons who pose the lowest level of risk and therefore represents the lowest level of priority for the CBSA immigration enforcement program. This in no way indicates that these individuals do not need to be processed; it simply means that in situations where a choice must be made between cases, the higher-risk case is to be given priority.

Criteria:

If an individual does not meet the criteria of any of the other four priorities listed here, then a value of Priority 5—Non-criminal should be used. This category also includes failed refugee claimants.

In cases where there is insufficient information for an officer to make a decision concerning the priority to be given to an individual, "Priority 5—Non-Criminal" shall be used. If, at a later date, additional information comes to light, the subject's priority ranking shall be revised upwards accordingly.

5.8 Authority as peace officers

An Act to Establish the Canada Border Services Agency (the CBSA Act)

58. (1) Paragraph (d) of the definition "peace officer" in section 2 of the *Criminal Code* is replaced by the following:

(d) an officer within the meaning of the *Customs Act*, the *Excise Act* or the *Excise Act, 2001*, or a person having the powers of such an officer, when performing any duty in the administration of any of those Acts,

(d.1) an officer authorized under subsection 138(1) of the *Immigration and Refugee Protection Act*,

A138(1) provides that designated officers have the authority and powers of peace officers for the purpose of enforcing the provisions of the Act, including arrest, detention and removal of persons from Canada. This provision is not limited and includes the powers and authority of a peace officer for the purposes of applying for search warrants set out in sections 487 to 492.2 of the *Criminal Code*. It should be noted that officers are not peace officers for the purpose of enforcing the *Criminal Code*.

Peace officers are defined in section 2 of the *Criminal Code* and offences as they relate to peace officers in the execution of their duties are covered by section 129 of the *Criminal Code*. Convictions for assaulting a peace officer have been obtained in cases involving immigration officers in the past. With the new definition of peace officers, offenders may be charged for assaulting a peace officer under section 270(1) of the *Criminal Code*.

5.9 Community and police liaison

Managers should encourage an active role for CBSA involvement in community law enforcement by promoting liaison with various community interest groups, police, and by developing training and education programs to increase awareness.

The CBSA Enforcement Branch has developed a *Police Officer's Handbook on Immigration* that provides general guidance on immigration processes, procedures and references. This guide is intended for limited distribution and should be distributed to police officers only.

5.10 Police assistance

Providing support to police services

If an officer is approached to provide support, they must bring the request to the attention of the local manager. An officer must not enter into private arrangements with police officials without the approval of their manager. Any assistance that an officer gives must be strictly in accordance with the Act.

An officer will not participate in police raids that are conducted solely for police reasons, except where an officer is asked to assist as a resource person if the police suspect that there may be immigration violations. Local managers are responsible for assessing the appropriateness of any immigration participation in police activities and the possible consequences on the integrity of the immigration program.

An officer should help to maintain the Agency's credibility with police forces. For example, when the police acknowledge immigration warrants, an officer should respond promptly and in a manner that recognizes the police efforts in locating persons of interest. A police officer has the authority as a peace officer under A142 to execute immigration warrants.

To best take advantage of available police support, officers must be familiar with the nature and level of services that the police in the local community are able to provide, and determine the procedures for using those services.

Police assist

The CBSA may be approached by officials of other law enforcement agencies with a request to assist the agency in an investigation, such as a request for deferring enforcement action, bringing witnesses to Canada to testify in court proceedings, authorization of an extension of status, or the issuance of a temporary resident permit so that the agency can continue surveillance or otherwise continue to obtain information from the person concerned. If an officer is approached for assistance, they must bring the request to the attention of the Manager, National Security Coordination Section, National Security Division, Enforcement Branch, CBSA. An officer must not enter into private arrangements with police officials without the approval of the Manager, National Security Coordination Section, National Security Division, Enforcement Branch, CBSA. Any assistance that an officer gives must be strictly in accordance with the Act.

Regional officials should inform the Manager, Enforcement Branch, CBSA, and the Director, Case Review, Case Management Branch, CIC of any case that may become publicly contentious.

5.11 Information on previously deported persons (PDP) on the CPIC database

The primary objective for entering information on previously deported persons (PDP) into the Canadian Police Information Centre (CPIC) database is to enhance public safety and security by providing peace officers with the necessary information to form an opinion that reasonable grounds exist to arrest the person without a warrant pursuant to A55(2)(a). The CPIC-PDP database will equip peace officers across Canada with

information that a foreign national has been deported from Canada, has returned to Canada without the Authorization under [A52\(1\)](#) and, at the time of the person's removal, there were reasonable grounds to believe that the person is a danger to the public and/or is unlikely to appear.

After a name is queried in the CPIC database and it is a direct match to a person found in the PDP database, the information on the CPIC database will instruct law enforcement partners to contact the Warrant Response Centre (WRC) for further assistance. For the purposes of arrests made without a warrant under IRPA, peace officers as defined by section 2 of the *Criminal Code* have the authority under [A55\(2\)\(a\)](#) to arrest and detain a foreign national without a warrant. For further information on the arrest and detention by peace officers under IRPA, see [section 16](#) below.

Information on individuals in the CPIC-PDP database originates from the FOSS-PDP database.

For more information, refer to relevant sections in this chapter and [ENF 11](#)

- persons added to the FOSS-PDP database ([section 17.1, ENF 11](#));
- persons added to the CPIC-PDP database ([section 17.2, ENF 11](#));
- the completion of the Previously Deported Persons (PDP) document in FOSS for persons deported prior to the implementation of the PDP ([section 17.3, ENF 11](#));
- removing a PDP record from the CPIC-PDP database ([section 25.3](#) below).

5.12 Investigations by two or more officers

Other than in a controlled environment, such as a jail or detention centre, officers should never carry out investigations without an accompanying partner. Officers are required to work in pairs or in certain circumstances it may also be necessary to increase the number of investigators and set up a team when more than one person is to be arrested or where specific circumstances warrant.

5.13 Use of force

For information on the use of force policy, refer to the the [Arming Policies Reference Manual - Policy on the Use of Force](#).

5.14 Special entry warrants

For more information, see:

- [section 5.15](#) below, Authority to issue Special Entry Warrants;
- [section 5.16](#) below, Policy on forcible entry;
- [section 5.17](#) below, Life span of special entry warrants;
- [section 5.18](#) below, Clarification of "dwelling house."

5.15 Authority to issue a Special Entry Warrant BSF 539F

The Supreme Court of Canada decision in the case of *R. v. Feeney* has impacted arrests made under the Act. Resulting from this decision, sections 529 to 529.5 of the *Criminal Code* have been amended to give jurisdiction to judges and justices of the peace to issue an arrest warrant containing an authorization for peace officers to enter a dwelling house to arrest a person named in the warrant. It allows for the authority to issue a separate Special Entry Warrant to enter a described dwelling house to execute a previously existing arrest warrant.

The authority to issue Special Entry Warrants and the requirements when executing these have been incorporated into the *Immigration and Refugee Protection Act* by [section 34.1](#) of the *Interpretation Act*. The same officials who presently have the authority to issue arrest warrants pursuant to the *Immigration and Refugee Protection Act* have the legal authority to issue Special Entry Warrants. However, for reasons of operational policy, only officers who are managers or supervisors can issue a Special Entry Warrant.

[Section 8](#) of the *Charter of Rights and Freedoms* protects a person's privacy and therefore officers requesting a special entry warrant must have reasonable grounds to believe that the individual to be arrested is in the dwelling house (see definition of "reasonable grounds to believe" in [section 6](#) below).

For exceptional circumstances where a supervisor or manager cannot be reached and, where an Immigration Arrest Warrant already exists, officers may apply to a justice of the peace directly or have an RCMP or other police officer apply to a justice of the peace on behalf of an officer for the issuance of a Special Entry Warrant.

At no time can the supervisor or manager who issued a Special Entry Warrant be involved in the search for or the arrest of the individual to whom the warrant relates.

For more information on the procedures on the use of Special Entry Warrants, see:

- [section 18.2](#), Special Entry Warrants (no permission to enter a dwelling house);
- [section 18.3](#), General procedures for issuing Special Entry Warrants;
- [section 18.4](#), Issuing a Special Entry Warrant in writing (in person);
- [section 18.5](#), Requesting a Special Entry Warrant by telephone or other electronic means;
- [section 18.6](#), Reporting requirements after issuing a Special Entry Warrant.

5.16 Policy on forcible entry

It is the CBSA's policy that officers are not to use forcible entry (see definition of "forcible entry" in [section 6](#) below) to gain entry into private premises to make an arrest. Where an officer executing a warrant at a dwelling house does not have permission from an adult occupant in ostensible control of the premises to enter, the officer may choose to continue surveillance of the premises until such time as a Special Entry Warrant can be obtained, if considered necessary.

5.17 Life span of Special Entry Warrants

Unlike warrants for the arrest of an individual that are valid until cancelled or executed, Special Entry Warrants do **not** have indefinite validity. Special Entry Warrants should be made valid for a reasonable period of time, depending on the facts and circumstances of the case. The supervisor or manager who is the decision-maker must specify an expiry date on the Special Entry Warrant (no more than 14 days). The life span of Special Entry Warrants will often be 24 to 48 hours in duration.

The supervisor or manager who is the decision-maker is expected to monitor the execution and expiry of Special Entry Warrants.

5.18 Clarification of "dwelling-house"

Section 2 of the *Criminal Code* defines "dwelling-house" as the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes:

- (a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or a covered and enclosed passageway; and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

The courts have interpreted "dwelling-house" to include a motel unit, a mobile home or an occupied tent. A patio was interpreted to be an extension of the dwelling house. However, an office used primarily for business purposes, even if it is slept in from time to time, is not a "dwelling-house."

It has also been interpreted that where a vessel, whether operating as a business or for pleasure, has been designed to be used as a permanent or temporary residence; is being used as a permanent or temporary residence; and has been designed to be mobile, a Special Entry Warrant is required, whether the boat is docked or at sea.

5.19 Notebook security

NOTE: This section is superseded by any updates to the CBSA Enforcement Manual Part 8, Documentation and Reports, Chapter 1 after November 1, 2009.

An officer's notebook contains personal and sensitive data. Officers must give it the same security as other CBSA information, namely, immigration files. Managers must retain completed notebooks in the same secure fashion as files and for the same period of time as required by the CBSA's file-retention policy. In some cases, managers may need to retain notebooks for an extended period because of lengthy court cases or notes concerning a continuing case file.

Officers leaving the CBSA must turn in all completed or partially completed notebooks. This procedure applies to all employees.

Managers and supervisors are responsible for reviewing officers' notebooks continually, every three months. The manager or supervisor conducting the review should note the time, date, review period, and their initials on the line following the officer's last entry.

6 Definitions

Authorization to return to Canada (ARC)	Written authorization by an officer, or in other prescribed circumstances, to allow a person to return to Canada after their removal order has been enforced.
Forcible entry	Entry into private premises notwithstanding the lack of permission to enter given by an adult occupant.
Foreign national	A person who is not a Canadian citizen or permanent resident, and includes a stateless person.
Investigation	A series of procedures that have the common intent of gathering information to enforce the Act and Regulations. It is a precondition to the Act's provisions for arrest, detention, report writing, removal, and prosecution.
Permanent resident	A person who has acquired permanent resident status and has not subsequently lost that status under <u>A46</u> .
Previously Deported Person (PDP)	A person who has been deported from Canada and is prohibited from returning to Canada without written authorization from an officer under <u>A52(1)</u> .

Reasonable grounds to believe	A set of facts and circumstances that would satisfy an ordinarily cautious and prudent person, and which are more than mere suspicion.
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7 Procedure: Overview of general investigations procedures

Officers are frequently called upon to make decisions quickly while maintaining the safety of themselves, the person being investigated and the general public.

The following are general procedures that should assist officers when conducting an immigration investigation:



7.1 Conducting an administrative review (Specific to CIC employees)

Responsibility for the enforcement provisions of the IRPA rests with the PS Minister. Arrests and detentions will be performed solely by CBSA employees. However, CIC continues its role in screening applications to identify inadmissibility or a violation of the IRPA. This "desk investigation" is limited to administrative activities and interview activities. Field investigations will not be undertaken by CIC officers in any circumstances.

Immigration Investigation functions performed by both CIC and CBSA staff:

Administrative activities	Basic workflow: <ol style="list-style-type: none"> 1. Receive information/tip 2. Prioritize case
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	<ol style="list-style-type: none"> 3. Conduct administrative review (review file, search databases, etc) 4. Record findings and decide next steps (call-in/refer to the CBSA/no further action) <p>Alternate workflows:</p> <ol style="list-style-type: none"> 1. Self-initiate investigation 2. Discover existing warrant on subject 3. Determine report type 4. Write inadmissibility report 5. Refer report for review 6. Reporting a permanent resident 7. Reporting persons who exhibit violent behaviour 8. Discover previous non-report decision 9. Investigate minor child 10. Exhaust all leads 11. Monitor inactive cases 12. Request documentary evidence 13. Cancel temporary resident permit (TRP) 14. Create watch-for/alert - existing client 15. Create watch-for/alert - new client 16. Amend/delete watch-for/alerts 17. Entry of watch-for/alert by Case Management (NHQ) 18. Enter AOC (association or characteristics) 19. Determine report type
Interview activities	<p>Basic workflow:</p> <ol style="list-style-type: none"> 1. Call-in for interview <p>Alternate workflows:</p> <ol style="list-style-type: none"> 1. Process walk-in referral 2. Process no-show for call-in interview 3. Monitor compliance

In examining an application and in determining what information may need further verification, see the following sources:

- [section 8](#) Procedure: Information sources, below
- [section 9](#) Procedure: Validating information, below
- [section 10](#) Procedure: Prioritizing information, below
- [OP 23/IP11](#) Anti-Fraud
- the IP or OP chapter related to the specific type of application being processed,

Once the administrative and interview activities are completed, it is expected that the CIC officer will have gathered enough information to be satisfied, one way or another, whether the applicant is eligible for the type of status requested and/or whether they are authorized to enter Canada. If the CIC officer is satisfied that the applicant is ineligible or inadmissible, the application should be refused, and appropriate action taken.

Note: If a pattern of organized fraud is suspected or identified, refer to chapter [OP 23/IP 11](#) Anti Fraud for instructions on referring such information to CBSA intelligence.

7.2 CIC referrals to CBSA inland enforcement for investigation (non-warrant cases)

A referral to the local CBSA Inland Enforcement Unit for field activities is warranted if:

- all administrative and interview activities have been concluded and there are reasonable grounds to believe that further investigation is warranted;
- the inadmissibility or the violation cannot be established to a degree that allows for the refusal of the application; and/or
- the facts of the case lead to believe that one or more of the following inadmissibility grounds may be involved:
 - [A34](#) Security
 - [A35](#) Human or international rights violations
 - [A36\(1\)](#) Serious criminality
 - [A36\(2\)](#) Criminality
 - [A37](#) Organized criminality
 - Other grounds where CIC and CBSA Managers agree that further investigation is warranted.

Any referral will include a cover note explaining the potential inadmissibility identified, the rationale for the referral, and a summary of the activities undertaken as part of the administrative review. Copies of the application and all supporting documentation or interview notes must also be included. The referral will be forwarded by the local CIC manager to the local CBSA enforcement office manager.

7.3 CIC referral to CBSA inland enforcement for possible arrest

An individual who is the subject of an immigration warrant or who is inadmissible and may be subject to arrest, may come to the attention of a CIC officer either through the processing of an application or by appearing at a CIC office. This will trigger a referral of the case to the CBSA. This also applies to situations where information on a client's whereabouts comes to light at a CPC.

A CIC officer is unable to execute an immigration warrant or to arrest without warrant pursuant to [A55\(2\)](#). CIC officers will therefore contact the CBSA with new information about individuals wanted on an immigration warrant, and ensure that the CBSA is informed and given an opportunity to respond to situations where an arrest may be warranted.

Guidelines for referral to CBSA inland enforcement for possible arrest

The following matrix describes six general scenarios when CIC may require the CBSA to deal with a possible arrest and provides guidance on whether CIC should contact the local CBSA office or the Warrant Response Centre (WRC). In most cases, the local CBSA Inland Enforcement office should be the primary point of contact and the CBSA, not CIC, will then liaise with the WRC.

Case scenario:	CIC will:	The CBSA will:
An application is received from an individual who is the subject of an immigration warrant. <i>The individual is not physically present at CIC.</i>	<ul style="list-style-type: none"> • contact the local CBSA inland enforcement office immediately • provide the CBSA with the individual's information along 	<ul style="list-style-type: none"> • decide if the warrant can be cancelled or if reasons for arrest remain valid;

	with a summary of the case.	<ul style="list-style-type: none"> inform CIC of the CBSA's decided course of action.
An application is received from an individual who is believed to be inadmissible to Canada and may warrant detention. <i>The individual is not physically present at CIC.</i>	<ul style="list-style-type: none"> contact the local CBSA inland enforcement office immediately provide the CBSA with the individual's information along with a summary of the case. 	<ul style="list-style-type: none"> decide if a physical response is warranted; inform CIC of the CBSA's decided course of action.
Information is received by CIC (i.e., tip letter) regarding an individual who is alleged to be in violation of the Act.	<ul style="list-style-type: none"> forward the information (including a copy of the tip letter) to the local CBSA inland enforcement office the day the information is received. 	<ul style="list-style-type: none"> confirm receipt of the information; and advise CIC of the CBSA's decided course of action.
An individual, present at a local CIC, is either the subject of an immigration warrant or is believed to be inadmissible to Canada and may warrant detention. <i>There is no indication the individual poses a danger to the public or risk to the security of Canada.</i>	<ul style="list-style-type: none"> contact the local CBSA inland enforcement office immediately provide the CBSA with the individual's information along with a summary of the case. 	<ul style="list-style-type: none"> decide if the warrant can be cancelled or if reasons for arrest remain valid; inform CIC of the CBSA's decided course of action. If physical response required, confirm identity of individual with WRC.
An individual, present at a local CIC, is the subject of an immigration warrant and may warrant detention. <i>It is believed the individual DOES pose a danger to the public or risk to the security of Canada.</i>	<ul style="list-style-type: none"> contact the local CBSA inland enforcement office immediately provide the CBSA with the individual's information along with a summary of the case. <p>If the local CBSA cannot be reached, CIC will:</p> <ul style="list-style-type: none"> Phone the WRC at immediately 	<ul style="list-style-type: none"> inform CIC of the CBSA's decided course of action and, if applicable, the estimated time of arrival of the CBSA officers. If applicable, confirm identity of individual with WRC. If the CBSA is not readily available, the WRC will coordinate with the

	<ul style="list-style-type: none"> • Provide the WRC with the client's information along with a summary of the case. 	local police and ask for their assistance.
<p>An individual, present at a local CIC, is inadmissible to Canada and may warrant arrest pursuant to <u>A55(2)</u>.</p> <p><i>It is believed the individual DOES pose a danger to the public or risk to the security of Canada.</i></p>	<ul style="list-style-type: none"> • phone the local CBSA inland enforcement immediately; • provide the CBSA with the individual's information along with a summary of the case. <p>If the local CBSA cannot be reached, CIC will:</p> <ul style="list-style-type: none"> • phone the local police immediately • provide the local police with the client and case information. 	<ul style="list-style-type: none"> • inform CIC of the CBSA's decided course of action and, if applicable, the estimated time of arrival of the CBSA officers. • If the CBSA is not available and the local police respond, the CBSA will liaise with the local police upon their availability.

In cases where there is an immediate threat to the safety of the CIC officer, assistance should be sought first from the local police.

8 Procedure: Information sources

In an investigation, it is essential to have a variety of information sources. When a permanent resident or foreign national makes an application under A15(1), they are obligated to tell the truth on their application and provide any documents pertinent to their application, including a visa and other documents that are reasonably required [A16(1)]. On request of an officer, a permanent resident or foreign national, who makes an application, must appear in person for an examination [A16(1.1)]. Nationals of certain countries who apply for a temporary resident visa, work permit or study permit, are required to submit biometric information as part of the application process (A11.1). In addition to these requirements, and specific to foreign nationals, they are obligated to submit photographs and fingerprints when requested by the officer [A16(2)]. Furthermore, on request of an officer, a foreign national, who makes an application, must appear for an interview for the purpose of an investigation conducted by the Canadian Security Intelligence Service under section 15 of the Canadian Security Intelligence Service Act for the purpose of providing advice or information to the Minister under section 14 of that Act, and must answer truthfully all questions put to them during the interview [A16(2.1)].

For all other investigations, the Act is silent on the actual activities of an investigation.

In some cases, the person concerned may confess during an interview. In others, the officer may be able to determine that a violation has occurred simply through the examination of the file or other supporting documents associated to the case.

There are standard procedures that can assist an officer to locate a permanent resident or foreign national who has violated the Act. These procedures include:

- examining information such as applications, files and complaints;
- using investigative sources such as computer systems, telephone directories and other Canadian and foreign government departments;
- liaising with the community, police, court services, correctional services; and
- contacting the person's co-workers, neighbours, friends, relatives, employers, and former employers by telephone or personal visits.

Officers should have a good knowledge of other related legislation such as the *Access to Information Act* that will assist them in deciding what type of information is accessible. Officers should also have a basic understanding of cross-cultural practices because of the varied customs, beliefs and lifestyles that may be encountered. Sound judgement and analysis will determine the value of contacts. When information is received, it should be input into the National Case Management System (NCMS), recording the type of investigation, the priority and the name of the assigned officer.

9 Procedure: Validating information

9.1 Determining citizenship

During an investigation, officers should have evidentiary information on the file to determine whether or not a person is a Canadian citizen.

For further information on the procedures for determining Canadian citizenship, see ENF 4, section 9 Examining Canadian Citizens at Ports of Entry.

9.2 Verifying permanent resident status

In order to verify or determine the status of permanent residents, officers should conduct a Field Operations Support System (FOSS) search, and, where appropriate, an NCMS search. The officers are encouraged to contact the Query Response Centre (QRC) at national headquarters if information requires clarification or to obtain evidence for a proceeding before the Board. For procedures to verify permanent resident status, refer to ENF 4, section 11.

9.3 Enforcement Information Index lookouts (EII) on FOSS for Interpol cases

In order to confirm the identity of a person, whenever there is an Enforcement Information Index lookout (EII) hit on FOSS, the officer should conduct a CPIC database check and contact Interpol by following the instructions in the Remarks section of the EII lookout. The CPIC database will show the reason the person is wanted and indicate "Interpol's interest," and that the information therein must not to be divulged to the person.

Interpol will confirm the warrant to the caller and will be required to supply further information on the person including fingerprints and photographs. Interpol Ottawa's hours of business are from 6:00 a.m. to 2:00 a.m. Monday through Friday and 6:00 a.m. to 4 p.m. on Saturday and Sunday. After hours, calls are answered by the RCMP Operation Centre who will contact a duty officer.

The downloading of these cases into FOSS has resulted in the creation of new FOSS client identifier numbers. Therefore, it is imperative that officers ensure that the person before them is the same person identified in the EII lookout. Once the officer is satisfied of the identity of the person, the officer must assess admissibility requirements under the Act and Regulations and take the appropriate action.

Regular FOSS maintenance procedures apply when officers encounter cases of multiple FOSS client identifier numbers for the same person. If it is determined that the subject is a Canadian citizen, the EII lookout should be removed. An e-mail report of removed EII cases as well as positive FOSS EII hits shall be sent to [REDACTED]

9.4 Communicating adverse information about a permanent resident to a Citizenship office

Permanent residents are eligible to apply for Citizenship after three years of continuous residence in Canada. Once Citizenship is granted, it is difficult to revoke. If an officer has information that might affect a permanent resident's eligibility to become a Canadian citizen, it is the officer's responsibility to advise the appropriate Citizenship office.

Citizenship is required to know when **not** to proceed with application processing because there are outstanding enforcement issues that need to be resolved. Some examples:

- A permanent resident arrives at a port of entry with a letter scheduling them for a Citizenship test. During the secondary examination, an officer discovers that the person has had long absences from Canada. This information might mean that the person does not meet residency requirements for Citizenship.
- A permanent resident becomes the subject of an Immigration investigation.
- An officer intends to write an [A44\(1\)](#) report against a permanent resident.
- A permanent resident is charged with an offence that, if convicted, may result in their removal from Canada.
- A mail seizure discovers Citizenship applications completed by individuals outside Canada, addressed to contacts inside Canada when it gives the impression that the applicant does not meet the residency requirements.

Officers should first query GCMS (Global Case Management System), if available, to determine whether the permanent resident has an application for Citizenship in process. The officer should then determine where the application is located, either at the CPC Sydney or at the local Citizenship office. If the application is at the local Citizenship office, the officer must immediately advise the local office to suspend processing until the enforcement issue is resolved. If the case is extremely urgent (for example, individual is about to take Citizenship oath within the next day or so), officers should contact the local office by telephone.

For all cases, whether a permanent resident has a Citizenship application in progress or not, officers should create an NCB in FOSS when it is determined that the information should be flagged to Citizenship.

If an officer wants to ensure there is no further processing on a Citizenship application until the enforcement issue is resolved, they should contact the CPC Sydney or the local Citizenship office by e-mail. In addition, the officer should enter an NCB in FOSS and include the following information in the remarks screen:

- the title: "CITALERT-HOLD PROCESSING";
- a brief description of the enforcement concern;
- the file number;
- the office location; and

- the name of officer entering the NCB.

Once the QRC notifies citizenship of the CITALERT the local citizenship office will check FOSS to determine when the last update on the case took place. If there is no indication in FOSS as to when the case will be conducted, the local citizenship office will contact the local CIC immigration or the CBSA office responsible for the case.

CIC immigration or the CBSA will respond to the request for an update within 60 days. If the investigation is ongoing, the file will be BF'd for six months. If no response to the query is received within 60 days, it will be re-sent to the CIC immigration or the CBSA responsible manager with a copy to CIC Admissibility Branch or CBSA Investigations and Removals, NHQ.

If an officer wants to simply inform Citizenship of information that is of interest to them, but does not consider it necessary to suspend the processing of a Citizenship application, the officer should enter an NCB in FOSS and include the following information in the remarks screen:

- the title: "CITALERT-FOR INFO ONLY";
- a brief description of the problem;
- the file number;
- the office location; and
- the name of officer.

10 Procedure: Prioritizing information

Regional CBSA management are responsible for local investigative planning based on the National CBSA immigration investigation ranking procedures, see sections [5.2](#) to [5.7](#).

When establishing the plans, cases should be considered based on the following factors:

- the seriousness of the alleged violation: refer to sections [5.2](#) to [5.7](#) on priorities
- the reliability of the source.
- the quality of information.

After plans have been established and recognized, officers should:

- respond to information through the conduct of an examination when a permanent resident or foreign national is making an application under [A15](#);
- respond to information which is received to any allegations of inadmissibility provisions of the Act; and
- respond to any additional information from other sources that is brought to their attention (i.e., outstanding immigration warrant), or encountered through the officers' efforts.

11 Procedure: Risk assessment

Risk assessments are part of a problem-solving strategy and should be done in light of the safety of the person being investigated, the public, enforcement partners and officers. Risk assessments should be ongoing throughout the progress of the investigation. Officers must recognize that there are general stages of data collection in determining the

degree of risk associated with a particular investigation. Although not all of the following stages apply to every investigation, officers should conduct a risk assessment when:

- planning the investigation at the office prior to the initial contact with the person;
- en route to the location;
- upon arrival at the location;
- during the approach of the location; and
- during the contact interview including upon entry, while inside and upon exit of the location.

The behaviours that officers may respond to and situational circumstances may change. Therefore, the reasonableness of the option selected may change at any point of the investigation. When conducting a risk assessment, officers should review the case file and consider individual factors. The following list is not exhaustive, but rather is reflective of the primary sources that contribute to a risk assessment. These factors include:

- identifying the physical environment where the investigation will be conducted;
- establishing the time and date of contact;
- assessing the background information of the person being investigated;
- considering the seriousness of the allegation;
- identifying resources that may be required (see the policy on Investigations by two or more officers, in [section 5.12](#));
- identifying the necessary equipment that may be required; and
- assessing the feasibility or practicality of the investigation

Officers should input into NCMS that a risk assessment has been conducted.

12 Procedure: Police assistance

During the normal course of investigative work, an officer may require police assistance. Police officers are peace officers for the purposes of IRPA and as such may arrest and detain permanent residents, protected persons and foreign nationals under the provisions of [A55\(1\)](#) and foreign nationals under the provisions of [A55\(2\)](#).

12.1 The Role of CBSA Criminal Investigations and the Royal Canadian Mounted Police

The CBSA Criminal Investigations Division (CID) and the Royal Canadian Mounted Police share responsibility for investigations and prosecutions conducted under sections [A117](#) to [A131](#) of the IRPA.

The CBSA CID is responsible for investigating all offences committed under the IRPA with the exception of cases linked to national security, human trafficking, and major organized crime which fall under the responsibility of the RCMP. The RCMP remains responsible for criminal investigation of offences under other legislation within the RCMP Immigration & Passport (I&P) mandate (specifically the *Citizenship Act* and the Canadian Passport Order), along with *Criminal Code* offences.

If an officer discovers evidence of a potential IRPA offence while carrying out his/her regulatory responsibilities, the officer should advise his/her Supervisor and the CBSA CID should be consulted. Referrals for all offences under [A117](#) to [A131](#) of the IRPA are to be forwarded to the CBSA CID for further investigation. It is important to note that IRPA

offences are not restricted to foreign nationals and that permanent residents and Canadian citizens are also subject to prosecution under the IRPA. The CID will liaise with the RCMP, if necessary, as per the division of responsibilities between the CBSA and RCMP.

The *Privacy Act* allows an RCMP officer conducting an immigration investigation access to immigration case files and to copies of official documents from immigration records. The CBSA and RCMP may agree to joint action in investigating organized violations of the Act.

Interpol Ottawa, which is managed by the RCMP, will coordinate and provide assistance to the CBSA in pursuing major international criminal investigations. In addition, they will assist in locating, deporting and extraditing foreign fugitives. For procedures on liaising with the RCMP, refer to section 12.4.

12.2 United States Police Agencies / Courts

An officer may establish direct contact with members of United States courts or police agencies. If an officer requires criminal documents on a person in Canada, and the officer is aware of the location in the U.S.A. where the person was convicted, the officer should directly contact the police agency concerned. All information exchanged must be lawful and in accordance with the *Privacy Act* and the *Access to Information Act*. See the Information Sharing Manual IN 1 – Overview on Information-Sharing.

12.3 Canadian Police Information Centre (CPIC) database

The Canadian Police Information Centre (CPIC) database provides information concerning persons under an immigration warrant and includes warrants issued against foreign nationals who have been previously deported from Canada.

The CPIC database stores a variety of valuable information of interest to enforcement agencies in Canada. It can provide an officer with data on the location of subjects, immigration warrants, assessments of danger and character profiles. For information on the CPIC policy refer to ENF 13, section 5.

12.4 Liaison with the RCMP and MIO/IPM on queries related to criminals

An officer may be required to obtain information in a country other than the United States. An officer may want to confirm the presence abroad of a person wanted in Canada or to ascertain the existence of, or obtain a copy of a criminal record. Officers should send their query to the responsible office, MIO/IPM, outside Canada. For information on obtaining police certificates refer to <http://www.cic.gc.ca/english/information/security/police-cert/intro.asp>.

Where officers require the assistance of the RCMP to obtain criminal records, requests must be made to Operations Interpol [redacted]. Officers should also send the Fingerprint System (FPS) numbers where available.

12.5 When police assistance may be required

Officers often depend on various police agencies for certain types of assistance. Below is a list of instances, among others, where police assistance is commonly used:

- to participate in investigations;
- to assist in dangerous situations where violent incidents may occur;
- to lay charges under the *Immigration and Refugee Protection Act* (RCMP – security & organized crime);

- to provide fingerprinting and photographic expertise; and
- to refer cases of convictions under federal statutes to the Agency.

12.6 Transitional procedures for immigration offences

In cases where the RCMP have laid charges under the offence provisions of the *Immigration Act*, 1976 and the Courts have not made a decision on the case, the police cannot re-lay charges under the offence provisions of the *Immigration and Refugee Protection Act*. The charges that were laid under the former Act are still valid and should be continued as these are governed by the transitional provisions of [A190](#).

13 Procedure: Interviewing

Interviewing is a basic investigative technique for getting necessary information about a possible offender, either from the person directly or from a third person. Officers must be able to interview quickly and efficiently, often under difficult conditions, such as in public, in a private residence, or at a place of employment.

13.1 When a person makes an application under the Act

A16(1) requires that a person who makes an application answer truthfully all questions put to them for the purpose of examination. An application is defined under R28 as a process where a person:

- submits an application in writing;
- seeks to enter Canada at a port of entry; or
- makes a claim for refugee protection.

For the purposes of inland examinations, where an officer believes that further information is required for the processing of the application or refugee protection claim, the person is obligated under A16(1) to:

- answer truthfully all questions put to them for the purpose of the examination; and
- produce a visa, all relevant evidence and documents that the officer reasonably requires.

For the purpose of A16(1.1), on request of an officer, a person who makes an application, is obligated to:

- appear in person for an examination.

Officers are to use the attached letter template to convoke a person to an examination (Appendix B).

For the purpose of an investigation conducted by the Canadian Security Intelligence Service (CSIS), pursuant to A16(2.1), on request of an officer, the foreign national who makes an application, is obligated to:

- appear for an interview with CSIS, and
- answer truthfully all questions put to them during the interview.

Officers are to use the attached letter template to convoke a foreign national to an interview with CSIS officials (Appendix C).

Note: Under [A16\(2\)](#) the term "relevant evidence" when applied to foreign nationals includes photographs, fingerprints and other information that may be used to establish their identity or compliance with the Act.

13.2 When an application is not made under the Act

Unless a permanent resident or foreign national is making an application under [A16\(1\)](#), the person is otherwise not required to answer questions.

An officer cannot arrest a person solely to answer questions. Refusing to answer questions is not in itself reasonable grounds for arrest. An officer must never attempt to secure answers to questions by a promise of favours or through threats or coercion. However, [A55\(2\)](#) provides:

(55.(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,

a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under [A44\(2\)](#); or

(b) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

In cases where a permanent resident or a foreign national has been arrested, detained or is the subject of a removal order, an officer may require under [A16\(3\)](#) any evidence including photographs, fingerprints and other information that may be used to establish their identity or compliance with the Act.

13.3 Interviewing techniques

Interviews can be broken into three categories:

- fact finding;
- information; and
- motivating or counselling.

When deciding on a questioning strategy for an interview, officers should always keep in mind the desired outcome and maintain direction of the interview at all times.

Officers should use a person's body language as an investigative tool and a guide for further questioning.

13.4 Questioning on private premises

Where no Special Entry Warrant exists an officer may question a person on private premises to clarify the status of the alleged violator if consent to enter the premises is provided by the

occupant. If the occupant asks an officer to leave, an officer must do so, otherwise the officer's presence may become a trespass.

13.5 Counselling to leave Canada

Officers may encounter foreign nationals who are in non-compliance with certain provisions of the Act. It is important for officers to exercise good judgment and common sense when applying the immigration inadmissibility provisions. They should be mindful of the Act's objectives and provisions dealing with immigration to Canada and refugee protection.

Officers have flexibility in managing cases where no removal order will be sought, or where the circumstances are such that the objectives of the Act may or will be achieved without the need to write a formal inadmissibility report under the provisions of [A44\(1\)](#).

Officers should determine whether the non-compliance was unintentional or excusable for a valid reason.

In the event an [A44\(1\)](#) report is written, the officer should refer it to the Minister's Delegate.

14 Procedure: Taking notes

14.1 Notes to file

Officers are often involved in incidents or interviews that may result in an admissibility hearing, tribunal hearings, court proceedings or general assistance to police officers. It is imperative that officers justify and support allegations and submissions by thorough and accurate notes that are placed on the file.

It is permissible to attach a separate page of notes to file as long as the notes clearly indicate:

- the date of the notes;
- the background information of the person concerned;
- the physical location of the interview;
- name of the interpreter, if applicable;
- the start and finish times of the interview;
- page numbers (i.e., 1 of 4, 2 of 4, etc.);
- officer's initials on each page; and
- the designated title of the officer.

14.2 General rules for note-taking

An officer should observe the following general rules for taking notes:

- the content of notes depends on the circumstances. Notes should be clear, concise, legible, understandable, accurate, complete and sequential;
- notes should be unbiased and provide a detailed account of the events officers have witnessed or received;
- the recommended sequence for recording notes should be in chronological order;
- all notes should be factual without inferences or evaluative statements. If an opinion is stated, the opinion should be labelled as an opinion;

- the information should be recorded in the same manner (with names, for example, last name, first given name, second given name);
- notes should contain only information that relates to work. Personal information must be avoided to prevent embarrassment or explanation;
- notes should be made at the time of the observations, or as soon after as possible. The courts have held that the maximum time afterwards is 24 hours;
- if notes involve a statement or record in a question-and-answer interview, the witness or the person directly involved should sign the statement or interview notes;
- small diagrams are permissible provided that they are clear;
- notes may include abbreviations, but the abbreviations should be defined and consistent to avoid confusion;
- sections of the *Immigration and Refugee Protection Act* or *Criminal Code* may be used. If legislative references are used, the provisions must be accurate;
- as a guide, the officer should ask the “who, what, where, when, why and how” questions to ensure that everything has been captured in the notes; and
- notes that are of importance to a particular case should be input into the notes section of NCMS with reference to steps taken and next steps.

14.3 Officer’s notebook

NOTE: The following sections, 14.3 to 14.5, are superseded by any updates to the CBSA Enforcement Manual Part 8, Documentation and Reports, Chapter 1 after November 1, 2009.

An officer's notebook (Investigator’s Notebook, IMM 5104B) is an essential investigation tool and will be used to refresh an officer's memory at a later date. Common examples include preparing accurate detailed reports or forming a basis for testimony if an officer is called on to testify at an admissibility hearing or in court. As a representative of the CBSA, an officer must use the notebook appropriately. This in turn will promote a professional and credible image. In particular, the format for preparing notes in the officer’s notebook should be consistent and comply with the following procedures:

- be consistent in note-taking: that is, always start each day the same way (for example: time, day, date, and weather conditions);
- all notes should be made in the officer’s own handwriting and in pen. Officers should use only one type of pen, preferably black. If an officer keeps switching pens, someone could assume that an officer made additions long after the fact;
- always relate information to its source: for example, weather: 6 degrees C (newspaper);
- try to leave large spaces between writings;
- ensure the notes of each case are separate to avoid confusion;
- keep all pages intact and refrain from amendments with correction fluid, eraser or scribbling out mistakes. If an error is made, officers are advised to draw a line through it then write their initial at the end of it;
- notebook content is a reflection of the circumstances. Notes could simply include the date, day, time, weather, time on duty, occurrences throughout the course of the day and the time off duty; and
- rule off the last line after each day.

Note: *Officer safety is paramount. Note-taking during certain situations is not always possible. Officers should recognize that note-taking should occur at an appropriate time and place.*

The Enforcement Branch of CIC had developed, before the creation of the CBSA, a notebook, and it is consistent with the format preferred by the courts. The notebook also contains reference material in the back to assist officers during the course of their duties.

The following are situations in which officers may use their notebook:

- at an admissibility hearing;
- testimony in court;
- to record the specific details of an A55 arrest;
- on escort officer duties;
- when a person eludes examination at a POE;
- when a person makes false or misleading statements;
- as a witness to an offence;
- providing assistance to other departments;
- when a person assaults a peace officer;
- when a person assaults a peace officer;
- when a person commits other offences;
- testimony in the U.S. under the *Mutual Legal Assistance in Criminal Matters Act*; and
- responding to complaints.

The officer's notebook is divided into three sections:

- **Cover:** this section contains essential data that may be required during legal proceedings. An officer should always complete this data before making a first entry. For obvious reasons an officer cannot note the last entry date until the notebook is full or returned for storage.
- **Blank pages:** this section consists of 100 numbered pages for note taking. Each page has a left margin where an officer should note appropriate times and a page number in the bottom right. Officers should not exceed this number of entries.
- **Reference pages:** this section contains the following information:
 - signal codes for two-way radio usage;
 - frequently used telephone numbers;
 - phonetic alphabet;
 - *Canadian Charter of Rights and Freedoms*;
 - *Vienna Convention*;
 - caution and secondary caution to charged person;
 - description of person;
 - height-weight conversion tables;
 - conversion tables for social insurance numbers (SIN);
 - reportable sections of the Act;
 - immigration offences and punishment;
 - arrest and detention; and
 - arrest without warrant.

14.4 Using the officer notebook at an admissibility hearing, court or other legal proceeding

In court or at an admissibility hearing, an officer may be asked to present their personal account of the events before, during and after an occurrence. It is generally acceptable for officers to refresh their memory from notes that they made at the time of the occurrence. Introducing a notebook into a courtroom procedure is a privilege and, as a common courtesy, before an officer consults their notes, permission for this should be sought from the judge or member of the Board.

Once an officer uses the notebook, the notes can be introduced as an exhibit and examined by the defence lawyer. The defence lawyer may attempt to identify irrelevant material that can discredit an officer's testimony or credibility.

Even if an officer does not use their notebook, a judge can request that an officer produce it. The judge decides whether to accept the officer's notes as evidence. An officer should always refresh their memory before testifying.

For testimony, an officer should be aware of the following points:

- counsel often asks what the weather conditions were at the time of the occurrence to test an officer's powers of recall;
- it is permissible for an officer to give their assessment of a situation supported by observations (for example: Your Honour, or Mr./Madame Member of the Board, in my opinion he appeared to be intoxicated by alcohol or a drug. This is based on the following observations I made at the time ...); and
- the courts have determined that an officer's notebook is a record of control of a government department and is subject to the same exemptions as other government files under the *Access to Information Act*. In addition, the notebook contains personal information within the meaning of the *Privacy Act*. Only the pages with information on the case can be produced or viewed in court. To ensure that the defence counsel reviews only the relevant pages, an officer should seal the notebook section (eg. with elastics and paperclips).

When officers enter information in their notebook, they should remember that a request under the *Access to Information Act* to gain access to an individual's case file might also include an officer's notebook. The possibility that information in an officer's notebook may be disclosed should not discourage officers from maintaining accurate, candid notes. If they follow all the general rules for note-taking, see [section 14.2](#), they should not be concerned if the contents of their notebook are released. Some information might be protected and not accessible, and access can be granted only to information concerning the individual making the request.

14.5 Statutory declarations

Officers should use the [IMM 1392B](#) standard form for making or receiving a solemn declaration. A statutory declaration can be used as part of the note-taking process and can be placed and used as evidence at a court proceeding or at the Immigration and Refugee Board. There are different types of statutory declarations that are available to an officer that may be used to accompany the file notes when gathering case evidence. The three types of statutory declarations include:

- **Narrative summary statutory declaration:** This format consists of a declaration by the officer recounting the facts that are known to them. The facts may have come to the officer's attention as a result of a conversation that the officer has heard or read. The narrative declaration would also include statements of facts pertaining to actions taken or observed by the officer. The weakness in this format, however, is that it is selective and might be based upon hearsay.
- **Question and answer statutory declaration:** This format is simply a record of an interview in which all the questions and answers are carefully recorded. This declaration reproduces the exact conversation and provides for the most reliable, objective version of an interview.
- **Admission statutory declaration:** This format consists of a statement from the person being interviewed. It is an objective statement of fact because it is not subject to interpretation and recording of errors by the officers.

When officers are completing a statutory declaration, the document should:

- identify the declarant;
- be a concise and accurate statement of the facts:
 - include only facts relating to the case;
 - not express opinions;
 - not draw conclusions;

- avoid legal or technical terms;
- include the date of the declaration; and
- include the signatures of the declarant and the person receiving the declaration.

15 Procedure: Arrests

Under A138(1), an officer has the authority and powers of a peace officer to enforce the Act, including the arrest, detention or removal from Canada of any person. The power to arrest and detain is a serious matter that results in a person being deprived of their liberty under section 7 of the *Canadian Charter of Rights and Freedoms*. Accordingly, arrests must be made with reasonable cause. Detention should only be an option when officers have explored other alternatives and have found them to be inappropriate.

15.1 Officer responsibilities for arrests under the *Criminal Code*

When an officer arrests someone, the officer is individually responsible for observing the following procedures outlined in section 29 of the *Criminal Code*:

29.(1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

(2) It is the duty of every one who arrests a person, whether with or without a warrant, to give notice to that person, where it is feasible to do so, of

(a) the process or warrant under which he makes the arrest; or

(b) the reason for the arrest.

(3) Failure to comply with subsections (1) or (2) does not of itself deprive a person who executes a process or warrant, or a person who makes an arrest, or those who assist them, of protection from criminal responsibility.

Although subsection 29(3) of the *Criminal Code* protects an officer in instances of non-compliance with subsections 29(1) (2), the Agency expects an officer to comply with subsections 29(1) and (2) whenever possible.

15.2 False arrest

Subsection 28(1) of the *Criminal Code* provides that a person is protected from criminal responsibility in the arrest of a wrong person if the officer:

- is authorized to execute the warrant to arrest;
- believes, in good faith and on reasonable grounds, that the person they arrest is the person named on the warrant.

Subsection 28(2) further clarifies that:

28.(2) Where a person is authorized to execute a warrant to arrest,

(a) every one who, being called on to assist him, believes that the person in whose arrest he is called on to assist is the person named in the warrant, and

(b) every keeper of a prison who is required to receive and detain a person who he believes has been arrested under the warrant,

is protected from criminal responsibility in respect thereof to the same extent as if that person were the person named in the warrant.

Subsection 37(1) of the *Criminal Code* states:

37.(1) Everyone is justified in using force to defend himself or anyone under his protection from assault, if he uses no more force than is necessary to prevent the assault or the repetition of it.

In other words, officers must have reasonable grounds to justify any use of force when performing their duties, and they should keep force to a minimum. As long as officers are able to justify their actions in accordance with the provisions of the *Criminal Code*, these actions will be supported.

While the *Criminal Code* confers protection from criminal charges should false arrest occur, an officer may nevertheless be open to civil suit. An officer must take every possible precaution to prevent such an occurrence.

15.3 Arrests with a warrant

Under [A55\(1\)](#), an officer may issue a warrant for the arrest and detention of a permanent resident, protected person or a foreign national who the officer has reasonable grounds to believe (see definition of "reasonable grounds to believe" in [section 6](#)), is:

- inadmissible under any provision of the Act and either:
 - poses a danger to the public (see [ENF 20, section 5.6](#)); or
 - is unlikely to appear (see [ENF 20, section 5.7](#)) for an examination, an admissibility hearing, a removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2).

If these grounds and reasons exist, an officer may issue a warrant for the arrest and detention of a foreign national or permanent resident by completing the [BSF 499](#).

Warrants for arrest and the Port of Entry

When a warrant for arrest has been issued at the Port of Entry by following the warrant issuance procedures in the sections below, the appropriate Inland Enforcement office must be notified immediately of the issuance of the warrant and the circumstances of the case. In addition, the file must be transferred to regional Inland Enforcement as soon as possible to ensure the subsequent investigation of the case and management of the warrant.

In cases where a warrant for arrest is issued in conjunction with an Order to Deliver ([A59](#)), the warrant will continue to be managed by the Port of Entry where required and no notification or transfer to Inland Enforcement is necessary.

Should there be any outstanding issues with the warrant, Inland Enforcement staff will discuss the case with the issuing POE office to gather information and to determine a suitable course of action. Furthermore, should the issuing POE office receive relevant information pertaining to the wanted person, such as information that may lead to the

execution or cancellation of the warrant, the information should be promptly forwarded to the appropriate Inland Enforcement for assessment.

In circumstances where a wanted person is seeking admission to Canada at a POE and a Border Services Officer updates the status of the warrant, all attempts should be made to notify the Inland Enforcement office that holds the file without delay. This will allow the Inland Enforcement office to update the file and adjust its investigative resources

Diligence in issuing warrants

The appropriate diligence must be taken and demonstrated prior to the issuance of a Warrant for Arrest. The *Immigration Warrant Checklist BSF 268* must be approved by the responsible supervisor or manager prior to the issuance of every warrant. The checklist contains all relevant information including:

- client details
- case particulars and priority ranking
- last known address
- system queries and input

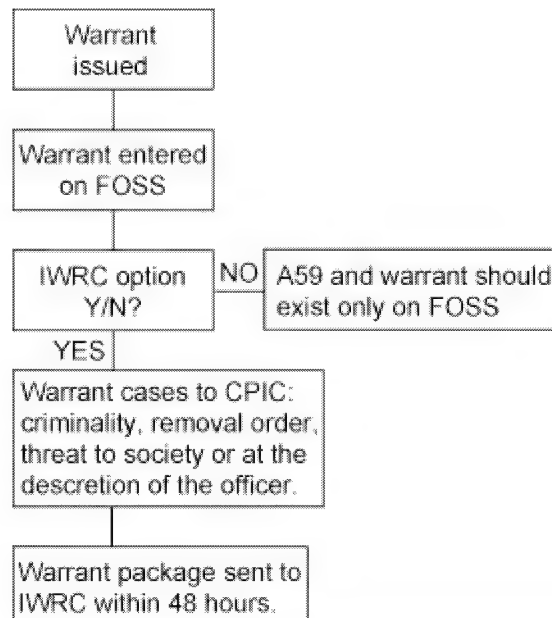
While respecting an officer's delegated authority, the CBSA is also demonstrating that a standardized approach is being taken prior to warrants being issued against individuals where there are reasonable grounds to believe they are inadmissible to Canada. The checklist also serves as a quick reference point on file for key information regarding the case/individual.

The warrant diligence checklist can be found at

For warrants issued prior to June 28, 2002 for SIO determinations:

The transitional provisions of IRPA [R325] provide that a warrant for arrest and detention made under the *Immigration Act*, 1976 is a warrant for arrest and detention under IRPA. All warrants, including those for SIO determination, that were issued under the *Immigration Act*, 1976 should be executed for the reason of that warrant.

Warrant flow chart



15.4 Completing Form BSF 499 (Warrant for Arrest)

When a Warrant for Arrest BSF 499 is issued, it must be completed on the nationally approved bilingual form that conforms to the legally approved format and text. The following procedures must be followed to accurately complete the manual BSF 499 warrant for arrest:

- the FOSS identification number must appear outside the legal text;
- print the family name and given name of the individual as it appears on FOSS/NCMS "Warrant for Arrest" screen. If FOSS has truncated the individual's name because of length, print the individual's complete family name and given name;
- do not enter aliases, file numbers, identity numbers, birth date or other information in this field. Aliases must be entered in FOSS on the "Personal Details" screen. The WRC will transfer aliases from the FOSS "Personal Details" screen onto the CPIC database;
- check-off the option box on the BSF 499 indicating the reason for the warrant;
- the authorized officer's signature should appear in the signature block; and
- the authorized officer's title as delegated in the Instruments must be clearly recorded on the face of the IMM 0420B (BSF 499).

If a mistake is made while completing the IMM 0420B (BSF 499), officers should draw a line through the error, initial and date it. Officers should not use correction fluid.

15.5 Entering warrants into FOSS

The Warrant Response Centre (the WRC) relies on information on the FOSS "Warrant for Arrest" screen to make entries into the CPIC database. It is essential for officers to complete FOSS information fields correctly. Officers must also make use of the remarks section to detail reasons for warrant issuance and to detail other relevant information. The information entered in FOSS must appear in either English or French. CPIC policy prohibits information on a single entry to be a combination of both official languages. The fact that a warrant has been issued should also be input into NCMS.

There are 3 sections on the "Warrant for Arrest" screen in FOSS:

Warrant entry:

This section must be completed by the officer at the same time the warrant is issued.

- this section captures information about the individual and the warrant issued. Experience has shown that details about the individual's physical appearance (e.g., height, weight, scars, tattoos) can be crucial for enforcement officers to properly identify the individual at the time of the arrest;
- the "Personal Details" screen is used to enter aliases;
- the Associations or Characteristics (AOC) screen is used to record information (either: known, suspected or possible) with respect to membership in criminal or terrorist organizations or groups having been identified with crimes against humanity. See the FOSS Coding Manual – Warrant for Arrest – AOC;
- the "Convictions" screen is used to enter known convictions, either in Canada or abroad. Officers should use the remark screen to provide details of convictions and equivalencies of foreign convictions;
- if the warrant is to be entered into the CPIC database, the information field "WRC" must be marked "Y" (YES). See instructions in Sec 15.6 with respect to transferring warrants to the CPIC database.

File transfer:

The WRC will return the cancelled or executed warrant to the office where the individual's file has been transferred (if on or after the date of its cancellation/execution). If this section is blank, the WRC will return the original warrant to the office that put the warrant into action.

Final warrant action:

This section is to be completed by the officer when the warrant is executed or cancelled (see [ENF 13, section 7.7](#)).

Note: *It is recommended that files be reviewed before entering immigration warrant data on FOSS/NCMS. When it is discovered that warrant information is incorrect and requires amendments to any of the physical descriptors of the person or changes to the tombstone data, refer to [ENF 13, section 7.7](#).*

15.6 Transferring warrants onto the CPIC database

To ensure the integrity of the data being transferred to the CPIC database, the WRC inputs and monitors the information contained in immigration warrant records being transferred to the CPIC database. Warrant packages must be sent to the WRC. For information when a warrant should be entered onto the CPIC database, officers should refer to [ENF 13, section 5.4](#).

If a warrant is to be entered onto the CPIC database, the "WRC Y/N" field of the FOSS screen must be filled with a "Y." This informs the WRC that the warrant is destined to the CPIC database and enables the transfer to take place once the mandatory documentation is received and verified at the WRC. If "N" is selected, the warrant is not transferred to the CPIC database.

Note: *When the WRC field has been left blank, the default is "Y."*

When [A55\(1\)](#) warrants are issued in combination with a notice to deliver an inmate [A59](#) these subjects are currently serving a sentence in an institution and their whereabouts are known to the officer issuing the warrant. Since officers are not actively looking for these individuals, it is vital that the officer entering the warrant onto FOSS ensures that an "N" is entered in the WRC field. This ensures that these warrants are not misdirected to CPIC and will avoid jurisdictional conflicts with any other laws of Canada. In exceptional cases, when there is a need to activate a warrant for the purposes of [A59](#), officers may notify CPIC by entering "Y" in the WRC field and sending the original documentation to the WRC.

If an existing warrant is to be transferred to the CPIC database, the "N" in the WRC field must be changed to "Y" to enable the transfer to take place. This can be done via the FOSS maintenance function.

15.7 Sending warrant packages to the WRC

In addition to the original immigration warrant, the mandatory documentation is the essential data required by the WRC before a warrant can be transferred to the CPIC database. A listing of this documentation can be found at

When completing a warrant package, accuracy of information is paramount.

All warrant packages must be forwarded to the WRC within 48 hours through a secure, timely and reliable courier or mail service. It should be noted that the majority of warrant package information is designated as Protected "B." Some information may also be classified as Secret. This information must be appropriately safeguarded.

Warrant packages are to be mailed to:

Warrant Response Centre Canada Border Services Agency

The external envelope should be devoid of all markings other than the WRC address and must bear a return address and a telephone number. Government standards for the shipping of classified information must be followed.

Courier or mail services must provide proof of mailing and, on request, record of transit/delivery for any items delivered via their service.

proof of mailing and records of transit/delivery should be requested for all items. Further, it is imperative to trace documentation lost en route to the WRC immediately.

15.8 Executing or cancelling an immigration warrant

For information regarding the **standardized warrant cancellation policy**, please refer to ENF 13, Section 5.6. The standardized warrant cancellation policy coincides with the general cancellation policy of when the reasons for arrest no longer exist.

Once an officer has confirmed with the WRC the validity and identity of the person subject to the warrant, they may execute the warrant if the officer is satisfied that the person is described in the warrant or cancel the warrant if the warrant does not have any validity. When a warrant has been executed or cancelled, the appropriate action should be input into NCMS.

Section 3 of the Warrant FOSS screen is the final warrant action that must be completed by the officer when the warrant is executed or cancelled. To cancel or execute a warrant, officers should follow these steps:

- from the Main Menu, go to the Full Document Entry screen in FOSS (FD);
- enter the FOSS-generated warrant document number in the existing document field (ED) in the identify document field;
- complete section 3 of the Warrant Screen and add any remarks.

Note: After a warrant has been executed and the person is arrested under A55(1), a Notice of Arrest must be completed either manually [IMM 1285B] or through FOSS using the Full Document Entry (FD) screen. The action should also be recorded in NCMS.

The existence of a warrant does not permit any discretion on arresting a person named in a warrant. An officer must arrest and detain the person unless the grounds for the warrant have ceased to exist, such as a loss of jurisdiction or change in circumstances. A warrant can be cancelled in situations where the person is no longer deemed to be inadmissible and unlikely to appear for an examination, an admissibility hearing, for removal or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); and / or to pose a danger to the public. In those cases where the grounds for the warrant have ceased to exist, the officers must seek to have the warrant cancelled from the CPIC database.

When an immigration warrant becomes invalid, it must be immediately removed from the CPIC database using the FOSS FD module. This action removes the warrant from the CPIC database but retains the warrant information on FOSS/NCMS; therefore it is important that the warrant be cancelled in FOSS/NCMS as well. The WRC will forward the warrant file together with a document transit and receipt form stamped with the cancellation date to the CBSA office conducting the action.

Whenever a warrant is cancelled for a principal applicant, the same must be done for any family members included in the application, as long as criminality or individual inadmissibility is not involved. When a case is decided favourably, the responsibility for cancelling the warrant is on the officer.

Note: Officers must exercise caution when merging client IDs when an active warrant exists. The client ID in which the active warrant is associated must continue to exist.

15.9. Referral of warrant cases from the CPC Vegreville

Warrants should be executed pursuant to [A55\(1\)](#) where there remains reasonable grounds to believe the person is inadmissible and unlikely to appear for examination, an admissibility hearing, removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); and/or they pose a danger to the public. In all CPC Vegreville cases, whether the person is a permanent resident or a foreign national, for whom there is an outstanding warrant, the CPC Vegreville **must** refer the case to an inland CBSA office **immediately** to make a decision on the case. For further information on referral of warrant cases from the CPC Vegreville, refer to the matrix in [section 7.3](#) above.

15.10 Arrests without a warrant

Before an officer makes an arrest without a warrant under [A55\(2\)](#), they must:

- have reasonable grounds to believe (see definition of “reasonable grounds to believe” in [section 6](#)) that a foreign national (other than a protected person, see [A95\(2\)](#)) is:
 - inadmissible (see [ENF 1](#)) under any provision of the Act and is either a danger to the public (see [ENF 20, section 5.6](#)) or unlikely to appear (see [ENF 20, section 5.7](#)) at for an examination, an admissibility hearing, removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister, pursuant to [A44\(2\)](#); or
- not be satisfied of the identity (see [ENF 20, section 5.8](#)) of a foreign national in the course of any procedure under the Act.

It is important to note that under [A55\(2\)](#) permanent residents and protected persons may not be arrested without a warrant. When officers arrest without a warrant under [A55\(2\)](#), a Notice of Arrest must be completed either manually [[IMM 1285B](#)] or through FOSS using the Full Document Entry (FDE) screen. The action should also be recorded in NCMS.

15.11 Arrest of a person named in a security certificate (with or without a warrant)

An officer may be contacted by CIC Case Management Branch in coordination with the CBSA Enforcement Branch to arrest and detain a permanent resident or a foreign national who has been named in an [A77\(1\)](#) security certificate.

Under [A81](#), the Minister of Citizenship, Immigration and Multiculturalism and the Minister of Public Safety may issue a warrant for the arrest and detention of a person who is named in a security certificate if they have reasonable grounds to believe that the person is a danger to national security, to any person or is unlikely to appear for a proceeding or removal.

The following are procedures that should assist officers in executing the arrest of a person named in a security certificate:

- the warrant is signed by the Minister of Public Safety and the Minister of Citizenship, Immigration and Multiculturalism;
- the CIC Case Management Branch, with the cooperation of the CBSA Enforcement Branch, will coordinate with the appropriate regional enforcement team for the arrest and detention of the permanent resident or foreign national named in the security certificate;
- the officer will receive a copy of the warrant for the arrest and security certificate;
- at the time of arrest, the person must be provided with the warrant and a copy of the security certificate. The person must be informed of the reason for their arrest, given their Notice of Rights under the *Vienna Convention* and their right to counsel using form IMM 0689B;
- after the arrest, the regional enforcement team must advise the CIC Case Management Branch and the CBSA Enforcement Branch of the arrest and detention, input the Notice of Arrest (NOA) into FOSS/NCMS; and
- CIC Case Management Branch in cooperation with the CBSA Enforcement Branch will be responsible for all other information that will be input into FOSS/NCMS.

15.12 Arrest of minors

Officers must exercise caution if minors, under the age of 18, have been or will be arrested or detained under the Act. Regardless of the age of the person arrested, a Notice of Arrest is required for all arrests under [A55\(1\)](#) and [\(2\)](#). For further information on the arrest or detention of minors, refer to [ENF 20, section 5.10](#).

16 Procedure: Arrest and detention by peace officers under IRPA

Peace officers may come into contact with persons of immigration interest during the regular course of their policing duties. In situations where a CBSA officer is not in the physical presence of the person being arrested, a peace officer may exercise designated authority to arrest and detain under [A55\(2\)\(a\)](#).

Peace officers as defined by the *Criminal Code* have the authority to arrest and detain under IRPA only for the purposes of [A55\(1\)](#) and [A55\(2\)\(a\)](#). As always, peace officers can arrest under section 495 of the *Criminal Code*, but with the exception of RCMP in designated areas, there is no authority under IRPA for peace officers to arrest and detain for identity under [A55\(2\)\(b\)](#).

The instruments of designation/delegation provide that for [A55\(2\)\(a\)](#) any peace officer as defined by the *Criminal Code* may arrest and detain without a warrant. Specifically, [A55\(2\)\(a\)](#) states that:

55.(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,

(a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2).

For the purposes of these guidelines:

- **"CBSA officer"** includes immigration officers designated for the purposes of arrest and detention under A55(1) or A55(2) (i.e., CBSA officer at a POE, CBSA enforcement officer, IWRC dispatch officer, etc.);
- **"Peace officer"** includes officers defined under section 2 of the *Criminal Code* (for example, a municipal or provincial police officer, an RCMP officer, a First Nations constable, etc.).

In order to protect the health and safety of Canadians and to maintain the security of Canadian society, it is important that the working relationships between the CBSA and law enforcement partners are maintained by ensuring that:

- adequate training is provided to various law enforcement agencies at all levels (i.e., federal, provincial and municipal);
- peace officers making arrests under IRPA are made aware of their authority under IRPA to arrest and detain;
- CBSA officers provide assistance for warrant and non-warrant cases, including providing guidance to peace officers when establishing the grounds and reasons for an arrest under A55(2)(a);
- CBSA enforcement officers make every reasonable attempt to provide immediate response to appear at the arresting agency;
- CBSA enforcement officers communicate feedback to the peace officer making the arrest and provide guidance to any questions that the peace officer may have; and
- CBSA enforcement officers communicate to the peace officer making the arrest the next course of action that is to be taken by CIC and/or the CBSA.

16.1 Arrest and detention with a warrant by a peace officer

In cases where an immigration warrant exists under [A55\(1\)](#), peace officers may be notified through the Canadian Police Information Centre (CPIC) to contact the Warrant Response Centre (WRC). The peace officer who receives the immigration warrant has the authority under [A142](#) and [A143](#) of IRPA to execute the warrant for the arrest and detention of the person named on the warrant.

Responsibilities of the WRC officers

After being contacted by a peace officer, the WRC officer will provide personal details and background information to confirm that the person who is in the presence of the peace officer matches the person named on the immigration warrant. The decision to confirm the validity of the warrant remains with the WRC officer.

The WRC is a centralized information centre that responds to the peace officer to provide assistance for the execution of the warrant by:

- providing fingerprints and photographs (when available);
- providing a copy of the warrant when it has been confirmed by the peace officer that it matches the person named on the warrant;
- notifying the CBSA office in the jurisdiction of arrest; and
- contacting the appropriate CBSA enforcement officer or the after-hours enforcement officer to provide a response to the peace officer.

Responsibilities of the local CBSA enforcement officer

- In situations where the peace officer has executed an immigration warrant, the local CBSA enforcement officer must establish contact with the arrested person at the detention facility or police station and is required to:
- complete a Notice of Arrest [IMM 1285B], indicating the arresting agency, reasons and grounds for the arrest, including the completion of the warrant field indicating "Y" that the person was arrested with a warrant; and
- execute the warrant on FOSS.

For further information on the procedures following arrest, refer to Procedures following arrest and detention, [section 16.3](#) below.

16.2 Arrest and detention without a warrant by a peace officer

Peace officers as defined in the *Criminal Code* have the authority to arrest and detain foreign nationals under [A55\(2\)\(a\)](#) of IRPA. This will normally occur when a local CBSA enforcement officer is unable to provide an "in person" response to a situation encountered by a peace officer. For example, a peace officer pulls over a vehicle during a traffic violation and encounters a foreign national who is suspected of being inadmissible to Canada. Due to time constraints of a situation or the remoteness of a physical location, availability of a CBSA enforcement officer may sometimes be limited.

Establishing effective lines of communication

Regional and local training to other law enforcement partners should promote effective working relationships and establish CBSA contact points. Law enforcement partners should be provided with copies of the *Police Officer's Handbook on Immigration* and should be advised of the business and after-hours contact numbers for the local CBSA enforcement offices.

To ensure effective and open lines of communication, local CBSA enforcement offices are responsible for providing the business and after-hours contact numbers, including any alternative after-hours arrangements to the office that is providing after-hour support. In addition, contact numbers for the after-hour enforcement officer should also be provided to the appropriate CBSA offices and other local law-enforcement agencies that are serviced by the respective CBSA inland enforcement office.

In recognition of the variables encountered during any potential arrest situation, the following communication channels have been established as guidelines to standardize the lines of communication between the CBSA and law enforcement partners. These guidelines may vary depending on regional and local operations. Officers requiring clarification on their regional or local operations should seek guidance from their supervisor or manager.

1. Assistance to peace officers—regular business hours

During regular business hours, peace officers should contact their local CBSA enforcement office. When a local CBSA enforcement officer is contacted by another peace officer, they should take appropriate action by providing assistance, either in person or by telephone.

In cases where the local CBSA enforcement officer responds "in person" and an arrest under IRPA is required, the local CBSA enforcement officer has the authority to arrest and detain under [A55\(1\)](#), [A55\(2\)\(a\)](#) and [A55\(2\)\(b\)](#).

However, in situations when the local CBSA enforcement officer is unable to respond in person, they should provide assistance to the peace officer to make an informed decision

whether or not to arrest under A55(2)(a). In circumstances where the peace officer decides not to arrest and it is clear that an arrest is required, the local CBSA enforcement officer may issue a warrant under A55(1) if the grounds and reasons exist. For further information on the procedures for providing assistance to peace officers when an "in person" response cannot be provided, refer to section 3 on "Assistance to peace officers when an "in person" response cannot be provided to a peace officer" below.

2. Assistance to peace officers—after hours

There are three points of contact available to peace officers after regular business hours. These include:

- an on-call local CBSA enforcement officer;
- a 24-hour port of entry; or
- an WRC dispatch officer.

In situations when after-hours calls are diverted to an alternative location other than the local CBSA office, an officer receiving the call from the peace officer should assess whether a local CBSA enforcement officer should be contacted.

Normally, contact to a local CBSA enforcement office is not required when the person has lawful status in Canada or it is clear that the person does not require further enforcement action. The immediate attention of a local CBSA enforcement officer may not be required where there is information to believe that the person is **not inadmissible** and is determined to be:

- a Canadian citizen, permanent resident or Indian registered under the *Indian Act*;
- a protected person;
- a permanent resident or a foreign national that is the subject of a removal order that is not in force or is stayed (i.e., a person awaiting a decision by the Refugee Protection Division or a PRRA officer, a person approved for permanent residence, etc.);
- a foreign national who has been lawfully admitted as a student, worker or temporary resident and is still in status; or
- any other person that does not require further attention by the CBSA.

In circumstances where a person's legal status in Canada is not ascertained or the person could potentially be the subject to an arrest and detention under IRPA or the *Criminal Code*, the officer receiving the call is required to immediately contact the WRC. It is important for the officer to be aware of the circumstances and urgency of a response, since this information must be relayed to a local CBSA enforcement office as soon as possible. In recognition that there will be many scenarios treated as urgent, in all cases officers must advise the WRC in order for the information to be relayed to a CBSA enforcement officer who will provide assistance to the peace officer either in person or by telephone.

For the procedures on providing guidance when contact to a local CBSA enforcement officer cannot be established, refer to Scenario B in section 16.2, part 3, "Assistance to peace officers when an "in person" response cannot be provided to a peace officer" below.

3. Assistance to peace officers when an "in person" response cannot be provided to a peace officer

There are two scenarios where an "in person" response cannot be provided to a peace officer.

Scenario A

If a CBSA enforcement officer cannot provide “in person” assistance, they can either provide guidance over the telephone to assist the peace officer to make an informed decision to arrest under [A55\(2\)\(a\)](#) or issue a warrant in circumstances under [A55\(1\)](#). If a warrant is issued, the peace officer can execute the warrant under [A142](#) and [A143](#).

Scenario B

When a peace officer contacts an WRC dispatch officer or a CBSA officer directly, that officer should receive the case details to assess whether an arrest is required. If there is the possibility of arrest, they are required to dispatch a local enforcement officer to provide a response to the peace officer.

If contact with the CBSA enforcement officer is not established, the WRC dispatch officer should provide assistance to the peace officer for them to make an informed decision whether or not to arrest and detain under [A55\(2\)\(a\)](#). The local CBSA enforcement officer must be advised at the first reasonable opportunity of their contact with the peace officer and made aware of the circumstances of the case, including any action taken by the peace officer.

Note: *CBSA officers who cannot respond “in person” and can only provide assistance over the telephone, cannot order a peace officer to arrest without a warrant.*

Since some peace officers may not be aware of their authority to arrest under [A55\(2\)\(a\)](#), the CBSA officer should provide guidance to the peace officer as follows:

- Reaffirm that peace officers have the designated authority under [A55\(2\)\(a\)](#) to arrest and detain without a warrant under the Act.
- Ensure the person is a **foreign national** and is not a Canadian citizen, permanent resident, registered Indian or protected person. Status in Canada may be established by the documentation in the possession of the peace officer and also through queries in FOSS, NCMS, GCMS, CPIC, NCIC, CAIPS or CATS.
- Provide information that will allow the peace officer to assess whether there are reasonable grounds to believe that the person is **inadmissible** under any provision of the Act and/or Regulations.
- Provide guidance to assist the peace officer in forming reasonable grounds to believe that the person is a **danger to the public or is unlikely to appear for an immigration matter**. The CBSA officer can provide guidance on forming arrest grounds but cannot decide these grounds for the peace officer. For references on establishing the grounds for danger to the public, see [ENF 20, section 5.6](#) and for establishing grounds for unlikely to appear, see [ENF 20, section 5.7](#).
- Determine the reason for the arrest. Reasons may include that the person is unlikely to appear for an **examination, admissibility hearing, for removal, or for a proceeding that could lead to the making of a removal order under [A44\(2\)](#)**. Based on the specifics of the case and through FOSS/NCMS queries, the CBSA officer will be able to provide guidance to the peace officer on the reasons for the arrest.
- Request that the arresting peace officer ensure that their arrest notes are made available to the local CBSA enforcement officer upon their arrival at the police station or detention facility. The peace officer’s notes should be used by the local enforcement officer for the completion of the Notice of Arrest.
- Input information into FOSS, NCMS or CATS, as appropriate, to include details provided by the peace officer.

In both scenarios A and B above, if a peace officer has made a decision to arrest under [A55\(2\)\(a\)](#) and requires a Detention Order BSF 304 for the person to be admitted into a federal, provincial or territorial detention facility, the responding CBSA Enforcement

Officer can complete and fax an **unsigned** Detention Order. The peace officer must be advised to sign the Detention Order prior to the person's admission to the detention facility. Peace officers have the designated authority to sign Detention Orders when they are the arresting officer.

16.3. Procedures following arrest and detention

When an arrest is made by a peace officer under [A55\(1\)](#) and [A55\(2\)\(a\)](#), the CBSA enforcement officer must advise the peace officer to provide section 10 Charter rights and transport the arrested person to the police station or a detention facility. If not already established, a local CBSA enforcement officer should be dispatched to attend the police station or detention facility on a priority basis.

Whenever an arrest is made, the local CBSA enforcement officer who arrives at the police station or detention facility is responsible for completing a Notice of Arrest [[IMM 1285B](#)] on behalf of the peace officer by using the peace officer's notes taken during the arrest. These notes and circumstances of the situation should indicate the reasons and grounds for the arrest. In the absence of the peace officer's notes, the local CBSA enforcement officer should verbally consult with the peace officer on the arrest details. The IMM 1285B is a record of the arrest that documents the time, date, place, arresting agency, grounds and reasons for the arrest. During the completion of the Notice of Arrest, the local CBSA enforcement officer should:

- request the arrest notes from the peace officer upon arrival at the police station or detention facility;
- advise the person of their rights under section 10 of the Charter as well as their rights under the Vienna Convention [[IMM 0689B](#)]. The IMM 0689B must be completed accordingly and notification to the person's country representative be given, if appropriate;
- complete the required fields and the remarks of the Notice of Arrest, including the grounds and reason for the arrest. The remarks should include the arresting peace officer's name, badge number, police agency and detachment; and
- ensure that the Notice of Arrest is inputted into FOSS/NCMS.

Following an arrest by a peace officer, a local CBSA enforcement officer then has the discretion to:

- prepare a report under [A44\(1\)](#) and release with conditions under A56;
- prepare a report under A44(1) and continue detention; or
- not write an A44(1) report and issue an Authority to Release from Detention ([IMM 5023B](#)).

For further information on detention and release procedures, refer to [ENF 20](#).

The local CBSA enforcement officer should also advise the arresting peace officer of the follow-up action that has been taken.

16.4. Procedures when an arrest is not made

If a peace officer decides that arrest and detention should not occur under [A55\(2\)\(a\)](#), the CBSA officer speaking with the peace officer over the telephone should record any relevant information that may be of interest to the CBSA for later follow-up.

Depending on the particulars of the situation, the information received may be relayed to the local CBSA enforcement office for their information and possible action. If there is any chance that the information could be used for immigration purposes, a watch-for NCB

(code 01) should be inputted into FOSS. The NCB should include the person's name, date of birth, place of birth, physical description, identity documents, address, associated persons, vehicle information, circumstances of the case, and any other information received from the peace officer. Also, the CBSA officer should enter the peace officer's name, badge number, police agency, police division and telephone number where the peace officer can be reached.

16.5. Seizure authorities of a peace officer under IRPA

Whether an arrest is made or not made, peace officers also have the designated authority under [A140](#) to seize and hold any means of transportation, document or other thing if the officer believes on reasonable grounds that:

- it was fraudulently or improperly used; or
- seizure is necessary to prevent its fraudulent or improper use; or
- seizure is necessary to carry out any purpose under IRPA (i.e., examination, admissibility hearing, removal).

Peace officers should be made aware of their designated authority to seize under A140 and be provided with guidance on when such authority should be exercised. For example, this authority may be exercised when the person is in possession of foreign identity documents (i.e., passport, birth certificate, national identification card, etc.) that may be useful for an immigration process such as a claim for refugee protection or later removal from Canada.

When a peace officer exercises their authority to seize they should provide a handwritten receipt of the seizure and contact the local CBSA office. It is the responsibility of the local CBSA enforcement officer to obtain the seized documents without delay from the peace officer and to decide whether the case requires further investigation. The local CBSA enforcement officer will also create a general NCB (code 12) in FOSS entering the details of the seizure.

For further information on the procedures for seizure under IRPA, refer to [ENF 12](#), [section 10](#) and [section 11](#).

17 Procedure: Making an arrest

Arrest is the act of depriving a person of their freedom. There is no way to predict the reaction of an individual faced with arrest.

In cases where a warrant has been issued, section 29 of the *Criminal Code* obligates the arresting officer to have a copy of the warrant with them and show a copy of the warrant if a request is made to see it. A police officer or peace officer has the authority to execute an immigration warrant under [A142](#) through the direction of an officer.

Prior to the actual arrest, officers should contact the WRC to:

- verify the validity of the warrant;
- obtain a copy of the warrant;
- obtain any other available information such as fingerprints and photographs.

This should assist officers to verify the identity of the person subject to the warrant.

The mere words, "you are under arrest", are sufficient to constitute an arrest in law, if the person complies. In the absence of the person's compliance or understanding, an

officer must actually touch the person. When making an arrest, officers should use the following wording:

"I am arresting you because (briefly describe the reason for the arrest). It is my duty to inform you that you have the right to retain and instruct counsel without delay. If you cannot afford counsel, legal counsel access to free legal aid may be available to you. Do you understand?"

An officer must clearly document on the file the reasons for arrest, because they may be called upon at any time to justify the grounds on which the decision to arrest was based.

In order to effect a valid arrest under the Act, the arresting officer must take the following steps:

- identify oneself as an immigration officer;
- display the officer's badge and identity card to the person being arrested;
- tell the person that they are under arrest, the reasons for the arrest and inform them of their rights to counsel;
- in the absence of acquiescence or where the person does not understand, the officer must actually touch the person. In the case of a language barrier, the person should be taken to the nearest CBSA office and an interpreter located;
- inform the person of their right to contact their embassy or a representative in their country's consulate in accordance with their rights under the *Vienna Convention* [IMM 0689B], see [section 17.3](#); and
- search the person, see [section 20.1](#).

17.1. Entering a Notice of Arrest in FOSS

The [IMM 1285B](#), Notice of Arrest (NOA), is a document which formally records the arrest and the reasons for the arrest of a person under the *Immigration and Refugee Protection Act*. After any arrest has been made under [A55\(1\)](#) or [A55\(2\)](#), an NOA must be entered immediately into the FOSS/NCMS database. The purpose of the NOA is to maintain accurate details of arrests made under IPRA such as the arrest time, date, place, reasons, grounds and arresting officer. The NOA can be entered into FOSS in two ways:

- where the NOA [IMM 1285B] was manually completed, the information must be entered in the status entry field, referring to the protected document number in the upper right-hand corner of the document; or
- If a manual NOA [IMM 1285B] was not issued, an officer can initiate the printing of a Notice of Arrest using the Full Document Entry (FDE) screen under the NA option (Notice of Arrest).

In both cases, it is imperative that officers indicate in the warrant field whether the person was arrested with or without a warrant. Remarks should also be entered into the "Remarks" screen to record the grounds and reasons the person is a danger to the public or is unlikely to appear for an examination, admissibility hearing, removal, a proceeding that may lead to the making of a removal order under [A44\(2\)](#) or for identity.

In the event that the person cannot be dealt with by the intended process, the officer should clearly mark the documents and file that correspond to the purpose of the arrest (i.e., examination, admissibility hearing, removal, or a proceeding that could lead to the making of a removal order by the Minister under [A44\(2\)](#)). Depending on the processes following an arrest and where a manual [IMM 1285B](#) was not completed, officers may want to place a FOSS printout of the Notice of Arrest on the file to physically record the details of the arrest.

If inadmissibility grounds exist, a report under [A44](#) may be required following a Notice of Arrest.

17.2 Obligations under the *Canadian Charter of Rights and Freedoms* toward persons being arrested

The *Canadian Charter of Rights and Freedoms* applies to persons arrested or detained under the Act. The obligations of officers informing the person being arrested of their Charter rights apply equally to arrests with and without a warrant. Section 10 of the Charter imposes the following duties on officers effecting arrests and ordering the detention of permanent residents and foreign nationals pursuant to the *Immigration and Refugee Protection Act*:

- The officer must promptly inform the arrested or detained person of the reasons for the arrest or detention. If language is a barrier, an interpreter must be used. A relative or acquaintance of the person, who is able to translate for them, can act as an interpreter in this situation.
- If the arrest and detention are pursuant to a warrant issued under [A55\(1\)](#), a copy of the warrant may be provided to the arrested person in fulfilment of the obligation to inform the person of the reasons for the arrest. If a copy of the warrant is provided to a person who is unable to read it, the officer must either read it to them or, if language is a barrier, have the warrant translated for the person.
- After an arrest or detention, an officer must not question the arrested person or otherwise attempt to elicit evidence from the person until they have been informed of their right to counsel and given a reasonable opportunity to retain and instruct counsel. This does not preclude questioning the person prior to arrest in order to obtain sufficient information to decide whether or not an arrest is warranted (for example, to confirm the person's identity and status in Canada).
- The officer must inform the person of the right to retain and instruct counsel without delay and provide the person with specific information about any legal advice services on immigration matters available to the person at no cost and how to access such services. The nature of the information provided depends on the actual services available at the time of the arrest in a jurisdiction. If applicable, the officer must inform the person of the fact that legal aid and/or the services of duty counsel are currently available, and provide information as to how the person can access these services. If such services are not available in the jurisdiction, the person is to be provided with the telephone book listing of lawyers and/or a 1-800 telephone number for regular legal aid services. Legal advice can only be provided by a member in good standing of a provincial law society (e.g., a lawyer) or a law student under the direction of a lawyer (e.g., student legal aid clinics). The number of telephone calls to lawyers that the person may make is left to the good judgement of the officer involved.
- Where the person chooses to exercise the right to counsel, the officer must provide the arrested person with a reasonable opportunity to exercise that right, taking into account any physical constraints. This includes the duty to offer the arrested or detained person the use of a telephone, in an effort to seek legal counsel. If counsel is present, the officer must allow counsel to provide advice to their client in private.
- The Agency is not responsible for the expenses and payments of counsel.

17.3 Notice of Rights conferred by the *Vienna Convention*

Under the Notice of Rights conferred by the *Vienna Convention*, persons arrested or detained under the *Immigration and Refugee Protection Act* have the right to have the nearest representative of the government of their country of nationality informed of the arrest and detention.

Form IMM 0689B serves to advise and record the Notice of Rights conferred under the *Vienna Convention*, as well as the exercise of those rights.

If the arrested or detained person cannot read the form or refuses to sign the form, the arresting officer must verbally inform the person that they have the right to contact a representative of the embassy or consulate of their country of nationality, in accordance with the rights of arrested person under the Notice of Rights conferred by the *Vienna Convention*. The officer is to record the fact that the person was verbally advised of their rights conferred by the *Vienna Convention* on the face of the IMM 0689B.

It is important that an officer take the time to explain what is happening to the person in a manner that they fully understand. The officer must use terms that the person understands to explain the violations under the Act. If language is a barrier, an officer must take the person to the nearest CBSA office and find an interpreter if one is not immediately available.

If the arrested or detained person wishes to have their government informed of their arrest and detention, the IMM 0689B should reflect this decision. The officer must inform their government representative, unless the person indicates a desire to contact their representative on their own initiative or informs the officer that their government representative need not be advised.

The officer is to record on the IMM 0689B, the date, time, and name of the government representative so informed. Any unsuccessful attempts to contact a government representative pursuant to the Notice of Rights conferred by the *Vienna Convention* should also be recorded on the person's file. An officer should complete this form and give it to the person concerned at the time of detention, or as soon as practicable.

17.4 Detention after the arrest

At the conclusion of an arrest, whether it is with or without a warrant, an officer must decide whether to detain the person. For procedures to follow when a person is detained, refer to ENF 20, section 8

18 Procedure: Arresting a person in private premises

An officer may enter private premises to perform an arrest if the occupant grants consent. The courts have ruled that there is no unrestricted right for a peace officer to enter a private dwelling in search of a fugitive.

It is the CBSA's policy that an officer must not force entry into private premises to make an arrest (see section 5.16). As well as the legal risk involved, the possibility exists that forced entry may be met with physical resistance. In the event that an officer is exercising a warrant, that they are certain that the person subject to the warrant is inside, and entry is denied, the officer should withdraw and conduct surveillance while making a request for a Special Entry Warrant.

18.1 Arresting a person where permission to enter a dwelling house is granted

Where an officer has made a proper announcement of their identity and purpose, and has received permission to enter from an adult occupant in ostensible control of that dwelling house, the officer may execute an arrest warrant in the premises *without* obtaining a Special Entry Warrant. In such cases, the officer may also arrest without a warrant the occupant or any other person in the dwelling house if grounds to arrest without a warrant under A55(2) come to light when the officer is in the dwelling house.

18.2 Special Entry Warrants (no permission to enter a dwelling house)

A Special Entry Warrant is required in **all** cases where an officer has not been given permission by an adult occupant in control of a dwelling house to enter to effect an arrest.

Where there is a valid and subsisting warrant for an individual's arrest issued pursuant to [A55\(1\)](#) and information or evidence indicates that the individual may be located in a specific dwelling house, a Special Entry Warrant may be obtained from a manager or supervisor, see [section 5.14](#).

In order to grant a Special Entry Warrant, the issuing officer must be satisfied by information on oath that the individual is subject to a valid immigration arrest warrant and that there are reasonable grounds to believe that the individual is or will be found in the described dwelling house. Special Entry Warrants are distinct from [A55\(1\)](#) Arrest Warrants and can be issued in person or by telephone or other electronic means.

In cases involving forcible entry (see definition of "forcible entry" in [section 6](#)) into a dwelling house, in addition to advising the local police force of jurisdiction, officers are required to possess:

- a Special Entry Warrant describing a specific dwelling house;
- a Warrant for Arrest BSF 499; and
- reasonable grounds to believe, (see definition of "reasonable grounds to believe" in [section 6](#)) that the individual to be arrested is actually in the described dwelling house.

Before entry is forced into the described dwelling house to effect an arrest, prior announcement is required, unless authorization permitting otherwise has been given pursuant to subsections 529.4(1) and (2) of the *Criminal Code*.

18.3 General procedures for issuing Special Entry Warrants

The following are general principles that are common to the issuance of Special Entry Warrants issued through a written, telephone or electronic request:

- A Special Entry Warrant to enter a specific dwelling house can only be issued if there exists a valid and subsisting [A55\(1\)](#) immigration warrant for the arrest of the individual sought.
- The request for the Special Entry Warrant can be made in person by an officer by way of a formal request in writing, or via telephone or other electronic means.

18.4 Issuing a Special Entry Warrant in writing (in person)

The following procedures must be met when requesting a Special Entry Warrant to a supervisor or manager in writing:

- The officer must request a Special Entry Warrant in writing in the Request for a Special Entry Warrant form BSF 538E and include:
 - a valid and subsisting [A55\(1\)](#) Warrant for Arrest BSF 499;
 - the address or accurate description of the dwelling house; and
 - reasonable grounds to believe (see definition in [section 6](#)), that the person is or will be present in that dwelling house
- The requesting officer must sign the completed BSF 538 and a decision-maker (supervisor or manager) must commission the completed form.

- The supervisor or manager may issue a Special Entry Warrant where they are satisfied that:
 - the completed Request for a Special Entry Warrant contains the information described above;
 - the information discloses that there exists a valid and existing warrant for arrest of the individual sought, issued pursuant to the Act; and
 - the information discloses reasonable grounds to believe (see definition in [section 6](#)) that the individual sought is or will be present in the described dwelling house.
- The supervisor or manager who is the decision-maker must require that the Special Entry Warrant be executed within a specified time period, see section 5.21. The expiration date must be recorded on the Special Entry Warrant.
- Where the supervisor or manager, who is the decision-maker, issues the Special Entry Warrant on the basis of a request in writing, they shall:
 - complete and sign the Special Entry Warrant form BSF 539E; and
 - note on the form, the time, date, and place of issuance. The decision-maker must place a copy of the Special Entry Warrant on the individual's file and give the other copies to the requesting officer.
- An officer executing a Special Entry Warrant shall, before entering the dwelling house specified in the Warrant or as soon as practicable thereafter, give one of the copies of the warrant to any adult present and in ostensible control of the dwelling-house.

18.5 Requesting a Special Entry Warrant by telephone or other electronic means

The following procedures must be met when requesting a Special Entry Warrant to a supervisor or manager by telephone or other electronic means (i.e., facsimile, e-mail):

- The requesting officer must first complete and sign a Request for a Special Entry Warrant form BSF 537E at their location. The information on the request form must be given verbatim to the supervisor or manager who is the decision-maker.
- The supervisor or manager who makes the decision whether or not to issue the warrant must make an accurate record of the requesting officer's identity, their oath, the information given under oath, and the time and date of the request.
- The supervisor or manager who is the decision-maker completes another Request for a Special Entry Warrant BSF 537E at the same time as the requesting officer makes the request for the Special Entry Warrant by telephone or other electronic means. The information submitted by telephone is to be certified by the decision-maker as to time, date, and contents, and placed on the file of the individual who is the subject of the request.
- The information submitted under oath via telephone or other electronic means by the requesting officer is to include:
 - a statement of circumstances that make it impractical to appear personally to obtain the Special Entry Warrant;
 - a statement that the individual sought is subject to a valid and subsisting warrant for arrest, issued pursuant to [A55\(1\)](#);
 - a statement setting out the address or other accurate description of the dwelling house in which the officer believes the individual is or will be present; and
 - a statement of the officer's reasonable grounds to believe (see definition in [section 6](#)) that the individual is or will be present at the described dwelling house.
- The supervisor or manager, who is the decision maker, may issue a Special Entry Warrant BSF 539E where they are satisfied that:
 - the request, submitted by telephone or other electronic means, contains the information described above;
 - the information discloses reasonable grounds for dispensing with a request submitted personally and in writing;

- the information discloses that there is a valid and existing warrant for arrest, issued pursuant to the Act, of the individual sought; and
 - the information discloses reasonable grounds to believe that the individual sought is or will be present in the described dwelling house.
- The supervisor or manager, who is the decision-maker, will require that the Special Entry Warrant be executed within a specified period of time, see section 5.21. The expiration date will be recorded on the Special Entry Warrant.
- Where the decision-maker issues the Special Entry Warrant by telephone or other electronic means, the decision-maker will:
 - complete

and sign the Special Entry Warrant [BSF 539E];

- note on the form the time, date, and place of issuance; and
 - place the Special Entry Warrant on the file.
- At the same time as the Special Entry Warrant is issued by telephone or other electronic means, the requesting officer shall complete and sign a duplicate copy of the Special Entry Warrant BSF 539E, noting on its face the name of the supervisor or manager who is the decision-maker, the time, date, and place of issuance.
- An officer executing a Special Entry Warrant issued by telephone or other electronic means shall, before entering the dwelling house specified in the warrant or as soon as practicable thereafter, give a copy of the warrant to any adult present and in ostensible control of the dwelling house.

18.6 Reporting requirements after issuing a Special Entry Warrant

It is not required that Special Entry Warrants be entered into FOSS. However, since these warrants are restricted to cases of forcible entry (where permission from an adult occupant in ostensible control of the premises is not granted), it is imperative that when a Special Entry Warrant is executed, a written report of the circumstances of the execution be made by the responsible officer. This report is to be placed on the person's file and a copy must be sent to:

Director, Inland Enforcement
Canada Border Services Agency

For information purposes, officers should input the issuance and execution of a Special Entry Warrant into NCMS.

19 Procedure: Searching

Section 8 of the Charter provides that everyone has the right to be secure against unreasonable search or seizure.

The test for reasonableness is whether an officer has reasonable grounds to believe (see definition in section 6) that there is a threat to the security of the person, of the officer or of any other person. An example of a threat to security is a situation in which an officer believes that the person is hiding an item that could be used to injure themselves or others, or which could be used to assist an escape.

19.1 Searching arrested and detained persons

The necessity for searches and an officer's right to search have long been recognized and supported by the courts, and are now well-entrenched in common law. Pursuant to [A138\(1\)](#), designated officers have the authority and power of peace officers to enforce any provisions of the Act, including any of its provisions with respect to the arrest, detention, removal of any person from Canada.

The courts have ruled that, as a peace officer, an officer may search an arrested person, and remove from that person any items within three categories:

- anything with which a person might injure themselves or others;
- any weapon or implement that might assist in the person's escape, and
- anything that can be considered as evidence in the violation for which the person has been arrested.

Note: *The search applies to anything in possession or within the immediate surroundings of the arrested person.*

Three conditions must be satisfied in order for the search of the arrested person to be valid. Pursuant to the common-law powers of search and seizure:

- the arrest must be lawful;
- the search must be conducted as incidental to a lawful arrest; and
- the search must be carried out in a reasonable manner.

19.2 General rules for searches

An officer should conduct a search when they arrest or detain a person. Officers must remove the person from spectators and conduct the search in a secure area. In addition, persons of the same sex should conduct searches. For general rules on conducting searches, see [ENF 12, section 7.9](#).

For general rules on search procedures see [ENF 12, section 7](#). Types of searches include:

- Preliminary searches ([ENF 12, section 7.11](#));
- Full examination searches ([ENF 12, section 7.11](#))
- Frisk search ([ENF 12, section 7.14](#));
- Disrobement search ([ENF 12, section 7.15](#)); and
- Search incidental to arrest ([ENF 12, section 7.7](#)).

When a search is conducted, officers must complete the Search form [[IMM 5242B](#)]. For procedures on completing the Search form, see [ENF 12, section 7.10](#).

19.3 Searching Canadian citizens

For further information on searching Canadian citizens, see [ENF 12, section 7.5](#).

19.4 Searching a private residence

The Act does not give an officer the authority to search private premises to obtain evidence. Illegal search is tantamount to trespass and may result in court actions and/or damages being awarded to the injured party.

An officer may search for evidence of an offence under the Act only if the officer first gets a search warrant. The Act specifically states, under [A138\(1\)](#), that an officer is classified as being a peace officer under sections 487 to 492.2 of the *Criminal Code*. These sections deal exclusively with search warrants and authorize an officer to swear off a warrant and bring the warrant to a judge or justice of the peace for sign-off. For further information on officers obtaining a search warrant by the judge or justice of the peace, refer to [ENF 12, section 8.6](#).

The courts would find it improper for an officer to get a search warrant under the guise of searching for evidence of an immigration offence, if the intention was to search for illegal aliens or evidence for an admissibility hearing or examination.

19.5 Securing a travel document on private premises

If a person under arrest asks the officer to enter private premises to secure a travel document, and the person cannot attend the residence, the officer should get the written consent of the person concerned to enter the premises and to secure the specific document.

The written consent is valid only to enter that person's dwelling and not someone else's. An officer should enter the dwelling with another officer. Where feasible, officers should encourage the landlord or owner of the premises to remain present.

20 Procedure: Seizure

The same authorities for seizure at the port of entry govern the seizure of material items in Canada. For detailed procedures on seizure, refer to [ENF 12, section 9](#). [A140\(1\)](#) authorizes an officer to seize and hold any means of transportation, document or other thing if the officer believes on reasonable grounds, (see definition in [section 6](#) above) one of the following:

- that the means of transportation, document or other thing has been fraudulently or improperly obtained or used;
- that seizure is necessary to prevent its fraudulent or improper use;
- that the seizure is necessary to carry out the purposes of the Act.

Note: *CIC and CBSA officers are delegated the authority to seize a document or other thing under [A140](#). Only the CBSA is delegated the authority to seize a means of transportation.*

20.1 Searching arrested and detained persons

For information on when to seize documents, see [ENF 12, section 9](#).

20.2 General rules for searches

Travel documents of persons who face criminal charges are often held by local police forces. When investigating individuals for allegations under the Act, officers should liaise with the local police to determine if a travel document is being held on their files. If so, the local police should be informed of the interest in having the document available locally for potential use, should it become necessary to remove an individual from Canada.

Every effort should be made to check FOSS/NCMS to see whether there is any indication of the existence of an original or photocopy of a travel document that might have been obtained during the person's previous contact with the Agency. If, for example, the FOSS client history shows that an application for an employment authorization was made, the officer should contact the CPC Vegreville to request a photocopy of the travel document submitted.

20.3 Searching Canadian citizens

During an investigation, officers can assist the removals officer by initiating the Background Information Document [IMM 5417B]. The Background Information Document collects certain key information most frequently requested by foreign passport issuing authorities. It also contains a space for the signature and photograph of the person concerned. It should be noted that:

- where no passport, travel or identity document is available at the time of arrest and/or writing the [A44](#) report, and where an officer has issued an administrative removal order, a Background Information Document, should be completed and signed by the person; or
- where a passport or travel document application for the person's country of citizenship is readily available, it should be used instead of the Background Information Document.

No applications for a passport, travel or identity document will be submitted to visa offices for processing until the person is considered to be removal-ready, see [ENF 10, Sections 9.2 to 9.4](#).

20.4 Searching a private residence

An officer may be required to testify in court or at an admissibility hearing that a material item collected as evidence has remained unchanged since it came into their possession, in other words, that the continuity of evidence has been maintained. For further information on procedures to ensure the continuity of evidence, see [ENF 12, section 11.2](#).

20.5 Securing a travel document on private premises

Officers should forward all known or suspected fraudulent or counterfeited document to Intelligence and Interdiction at National Headquarters (NHQ). For further instructions on the procedures for disposing of fraudulent documents, refer to [ENF 12, section 11.14](#).

20.6 Returning seized documents

Officers should return seized documents to the owner or the proper issuing authority either:

- upon the person's removal from Canada; or
- when a decision is made to allow the person to remain in Canada.

[R257\(3\)](#) requires that, if a seized document is not returned, it shall be retained for as long as is necessary for the administration or enforcement of Canadian laws, after which it is subject to the applicable laws relating to the disposal of public archives.

Before retiring a file, an officer should return other documents (such as Social Insurance Number cards) to the issuing authority with a memorandum outlining how they came into the CBSA's and/or CIC's possession.

An officer must always provide the holder with a receipt (Notice of Seizure [IMM 5079B](#)), for a seized document and a Property Receipt [[IMM 5041B](#)]. For further information, refer to [ENF 12](#), sections [11.6](#) to [11.12](#).

21 Procedure: Fingerprinting and photographing

21.1 Person makes an application under the Act

When a permanent resident or a foreign national makes an application, they are obligated under ss. [16\(1\)](#) of IRPA to answer truthfully all questions put to them for the purpose of the examination and to produce all relevant evidence and documents that the officer reasonably requires.

In the case of a foreign national, pursuant to ss. [16\(2\)](#) of IRPA, relevant evidence includes photographic or fingerprint evidence and may include a request from the officer that the foreign national submit to a medical examination. In accordance with s. [28](#) of IRPR, a person makes an application when they:

- submit an application in writing;
- seek to enter Canada;
- seek to transit through Canada as provided by [R35](#); or
- make a claim for refugee protection.

21.2 Person has been arrested, detained or the subject of a removal order

Subsection [16\(3\)](#) of IRPA gives authority to an officer to take fingerprints and photographs of a permanent resident and a foreign national who has been arrested, detained or is the subject to a removal order.

21.3 Taking a set of fingerprints

For information and procedures on taking a set of fingerprints, refer to [ENF 12](#), section [12](#).

21.4 Use of fingerprint forms

Although an officer may ask any police force to take fingerprints or photographs, fingerprints or photographs must be submitted to the RCMP to determine the person's identity.

The following forms are used by CBSA for the purpose of fingerprinting:

- **C-216C Fingerprint Form:** This form is *green* in color. The C-216C fingerprint form is used for *civil* purposes such as visas, security checks, and applications for permanent residence.
- **C-216 Fingerprint Form:** This form is *brown* in color. The C-216 is used for *criminal* purposes such as fingerprinting persons suspected of having a criminal record or charges under the *Immigration and Refugee Protection Act*.

Note: The C-216 Fingerprint Form will no longer be used for refugee claimants.

- **C-216R Fingerprint Form:** This form is *blue* in color. The C-216R will only be used for *refugee* claimants. Any C-216R fingerprint form received by the RCMP will be processed as Refugee applicants.

For the procedures on the completion of the fingerprint forms and the addresses for forwarding fingerprints forms, refer to [ENF 12, section 12.3](#).

22 Procedure: Detention

For detailed instructions of policies and procedures on Detention, refer to chapter [ENF 20](#), Detention. When a person has been detained or released, detention tracking information should be entered into NCMS immediately.

23 Procedure: Enforcement incident reporting requirements

It is the policy of CBSA to report incidents involving the use of force by its officers and to ensure that these reports are reviewed on a continual basis to recognize exemplary behaviour, maintain program integrity and identify areas of concern, the need for retraining or the need for further investigation.

For detailed procedures on Use of Force and Security Incident Report Requirements, refer to [Arming Policies Reference Manual - Policy on the Use of Force](#).

24 Procedure: Report writing

24.1 Inadmissibility provisions under the Act

For information on inadmissibility provisions and evidentiary requirements for specific allegations under the Act, refer to [ENF 1](#) and [ENF 2/OP 18](#).

24.2 Investigator report

Officers should gather information collected throughout their investigation and record the information on the [IMM 5040B](#), Investigator Report, in order to provide a case synopsis of each investigation. This form should reflect any background information of the person as well as the occurrences that take place or have taken place in the course of the investigation. The Investigator Report should assist officers when preparing an inadmissibility report under [A44\(1\)](#) and can also be used as evidence at an admissibility hearing.

24.3 Preparing an A44(1) report

When an officer has determined that a permanent resident or foreign national is inadmissible under the Act, they may prepare a report that shall be transmitted to the Minister's delegate. See [section 4](#), Instruments and delegations, for representatives who may receive a report under [A44\(2\)](#). For instructions on [A44\(1\)](#) report writing procedures and guidelines, refer to [ENF 5](#).

Removing a person from the Previously Deported Persons (PDP) database

The previously deported (PREV.DEP) flag in FOSS will be automatically disabled and will electronically remove the information from the CPIC-PDP database only after:

- an officer completes an ARC screen in FOSS or CAIPS and an Authorization to Return to Canada under [A52\(1\)](#) has been granted; or
- a subsequent [A44\(1\)](#) report has been printed final in FOSS.

By removing such persons from the CPIC-PDP database, CPIC will provide peace officers with accurate information and ensure that the reasons for an arrest remain valid. The removal of CPIC records will provide a safeguard against the possibility of wrongful arrest and the unnecessary use of valuable law enforcement resources.

Officers should carefully consider whether the PDP information should remain on the CPIC database in the exercise of their discretion when writing an [A44\(1\)](#) report. It must be recognized that the only way to disable the PREV.DEP flag and remove a previous deportee from the CPIC-PDP database is by writing an [A44\(1\)](#) report.

Appropriate grounds, in addition to any other reason(s) for inadmissibility, would be [A41\(a\)](#) for [A52\(1\)](#) (see [ENF 5, section 8](#)).

Note: If an [A44\(1\)](#) report has to be deleted from FOSS in order to correct an error (e.g., the [A44\(1\)](#) report was completed against the wrong client ID), it is important that officers double-check to ensure that they have not disabled an existing PREV.DEP flag that needs to be restored. Where the PREV.DEP flag has been disabled in error, an e-mail should be sent to the WRC immediately with a full explanation of what occurred and requesting the flag be re-enabled.

24.4 Report requirements

To successfully complete an accurate [A44\(1\)](#) report, each report should include specific information. For further information on report requirements refer to [ENF 5, Writing A44\(1\) Reports](#).

24.5 Narrative memorandum

For A44(1) cases involving permanent residents, an officer should include with the report a detailed narrative report with recommendation to the Minister's Delegate for their decision on the referral for admissibility hearing, as applicable.

Note: In the case of long term permanent residents reported under A34, A35, A36(1), and/or A37, see [ENF 6, section 19.3](#) for criteria. The CBSA Manager or the CBSA Director at the regional level has the delegated authority to refer the report to admissibility hearing.

The first part of the narrative memorandum is a factual statement, not personal opinion, that should include:

- the person's identity, with name, aliases, date and place of birth, citizenship, and admission particulars;
- details on the violations, and a parole or release date if the person is serving a sentence; and
- background information, including (as applicable) the person's employment, marital status, financial standing, degree of establishment, family outside Canada, details of passports and travel documents, and the status in Canada of the person's spouse and children.

The second part of the memorandum includes the officer's opinions and recommendations, such as:

- opinions on the person's family relationships, degree of establishment and reasons for contravening the Act;
- a recommendation, with a rationale; and
- reasons for any delay in submitting the report.

If the officer recommends an admissibility hearing, it is necessary that the officer attach the following documents (in duplicate) to the memorandum:

- certified true copies of all relevant immigration documents, and other certificates and affidavits that can be obtained from the records manager of the Query Response Centre, if applicable;
- originals or certified true copies of other documents relevant to the case, such as a birth certificate, marriage certificate, and a certificate of conviction or other evidence of a previous conviction that is acceptable in a court of law;
- if required, Request to Amend Immigration Record of Landing or Confirmation of Permanent Residence form, IMM 1436B;
- police occurrence reports;
- probation, parole and psychiatric assessments;
- police records and information on other convictions not reportable under A44(1); and
- proof of a search of citizenship records (see ENF 4, section 9).

When sending certificates of conviction, officers are reminded to ensure that the conviction (as opposed to the original charge) meets the requirements of the subsection under which they are being reported under A44(1).

For reports under A44(1) in Canada, the relevant form [IMM 5084B] should be completed.

24.6 Reporting persons who exhibit violent behaviour

In cases where a person exhibits violent or unstable behaviour, there are specific procedures that an officer must follow when completing an A44(1) report:

- clearly document on case files any difficulties encountered with the person, and any available history of the person's behaviour. This will assist the hearings officer, who must be aware of inherent risks in arranging a safe admissibility hearing setting;
- do not bring such a person to the CIC office if an officer can make alternative arrangements at detention centres or other institutions.

Appropriate enforcement action may include arrest with a warrant under A55(1) or arrest without a warrant under A55(2) if the grounds for arrest exist. If an officer decides to arrest, the officer must also decide whether to proceed without police assistance. The officer should assess the surrounding conditions and the person's behaviour before determining if assistance is required.

24.7 Reporting procedures for unaccompanied minors

When officers are considering a report on an unaccompanied child under 18 years of age, and enforcement action may be taken against the reportable minor, they must refer the case to the

manager who will forward the report to the Regional Director General for a review of all the circumstances.

24.8 Young offenders

Under the *Youth Criminal Justice Act*, a young person is a person who is, or in the absence of evidence to the contrary, appears to be 12 years of age or more but less than 18 years of age.

24.9 Determining if an offence is within the *Contraventions Act*

For instructions on determining whether an offence is within the *Contraventions Act*, refer to [ENF 2/OP 18](#).

25 Procedure: Notification to the Support System for Intelligence (SSI)

Where a person makes a refugee claim in Canada, is a stowaway or deserter of a ship, the officer in Canada must notify the Support System for Intelligence (SSI). The SSI will automatically notify the Administration Fee System (AFS) who then faxes a transportation company of their transportation liability.

In cases where a person has been previously reported to the Support System for Intelligence and has subsequently eluded examination, officers should amend the "Comments" section of the SSI report

26 Procedure: Diplomats, consular officers and representatives or officials of a foreign country, of the United Nations and of international organizations

Because officers may be called on to determine whether to write a report concerning a diplomat, consular officer, representative or official of a foreign country, of the United Nations or of an international organization, or a member of that latter family or staff, they should be aware of the special circumstances of those persons' status in Canada. For background information, see:

- first entry to Canada; [ENF 4, section 13](#);
- visa requirements; [ENF 4, section 13](#);
- diplomats, consular officers, representatives, officials (and their family members) accredited to Canada, [FW 1](#);
- foreign government officials not accredited to Canada, [FW 1](#);
- private servants of foreign representatives, [FW 1](#);
- locally engaged staff of diplomatic and consular missions, [FW 1](#);
- family members of foreign representatives in Canada, [FW 1](#).

26.1 Violations of the Act and Regulations

If an accredited member of a foreign mission violates the Act or its Regulations, an officer must consider both the Act's provisions for immigration-related procedures and international conventions such as the *Vienna Convention*. It is the CBSA's policy not to refer a person to an admissibility hearing as long as the person is an accredited member of a foreign mission.

If a family member works without an employment authorization, an A44(1) report may be written. The family member should not be directed to an admissibility hearing as the authorization to remain in Canada is issued by Foreign Affairs Canada.

Where circumstances warrant such action, an accredited person may be declared *persona non grata*, or the sending state may be requested to recall the person concerned or terminate their functions with the mission. If the person's accreditation is cancelled, an admissibility hearing may be conducted for violations that may have occurred before or after the period of accreditation of the person concerned. An officer should decide cases individually, in consultation with the Office of Protocol of Foreign Affairs Canada.

An officer should address questions related to diplomats, consular officers, representatives and officials of foreign missions in Canada to the:

In the case of emergency of documentation verification, officers can contact the Documentation Officer at the Office of Protocol, _____ or after hours at _____


26.2 Forwarding information to Inland Enforcement Division, NHQ

In consultation with the Department Foreign Affairs Canada, National Headquarters (NHQ) will deal with cases where it is determined that there have been violations of the Act or its Regulations involving persons accredited to foreign missions, and cases involving persons who are employed by foreign missions but who have not been properly accredited.

An officer should take the following actions:

- address an A44(1) report (if appropriate), with a memorandum from the CBSA office manager outlining the circumstances of the case, to:

Director
Inland Enforcement
Canada Border Service Agency

-  report any infractions to the attention of the Office of Protocol, Diplomatic Corps Services by fax at _____

27 Procedure: Testifying

In criminal trials, an officer may be subpoenaed to appear in court to testify. This may include testifying at a *voir dire*, which is like a trial within a trial, held to ensure that statements taken by persons in authority, including officers, are given freely without the use of force or threat. When officers are being subpoenaed by a police officer, they should ask what evidence will be required. If the police officer wants an officer to bring the immigration case file, they should tell the officer that the file will be subpoenaed as well.

Criminal trials and immigration inquiries often take place several months after the actual arrest or reporting of the person concerned. Well before testifying, an officer should ask the crown attorney or hearings officer what is expected of an officer, so that they know which notebooks and documents to use. Before testifying, an officer should review the notes and case file, keeping in mind the salient points that the Crown attorney or hearings officer wants to cover.

27.1 Format for presenting evidence

In court or at an admissibility hearing, each witness gives evidence in three stages:

- examination by the side calling the witness, which can be the hearings officer, the crown attorney, or the defence counsel;
- cross-examination by the other side used to:
 - weaken, qualify or destroy the evidence given by the witness;
 - make one's own case using the testimony of the other side's witness; or
 - test or attack the credibility of the witness; and
 - re-examination by the side that originally called the witness used to resolve any ambiguity or point that became confused as a result of cross-examination

27.2 Conduct of officers as witnesses

When officers are called as a witness in a court, admissibility hearing or other tribunal, they should comply with the following guidelines:

- dress in appropriate business attire;
- conduct themselves in a business-like manner when they are waiting to testify, and when they are in court or in an admissibility hearing room;
- be pleasant, courteous and impartial;
- when being called as a witness, they will take an oath or affirmation. Normally, officers will be asked to state their occupation, their present job position, the number of years they have spent in that position, and their work location;
- when asked a question, officers should be sure that they understand it before answering. Officers should only answer what is asked and avoid volunteering information. If an officer can answer a question with a simple "Yes" or "No," then that is the answer that should be given;
- do not give opinions;
- they should give testimony slowly and clearly, so that everyone in the court or at the admissibility hearing room can hear it;
- follow the procedures for consulting their notes, see [section 14.5](#)
- when defence counsel asks an officer a question, the officer should not answer immediately. The officer should give the crown attorney or the hearings officer time to object, if need be. This does not mean that an officer should look at the crown attorney or the hearings officer whenever defence counsel asks a question; they should merely pause slightly before starting to answer;
- when an officer is unsure of a fact, or if the officer does not have any further information, the officer should state just that. If the officer makes a mistake or error, they should

correct it without hesitation. If an officer tries to defend a slight error or slip, their entire testimony could be discredited;

- if an officer is asked to relate a series of events, such as what took place during the course of a call, they should recount the events simply and in chronological order;
- defence counsel may be provocative during cross-examination. An officer's best response is simply to state the facts, remain calm, and control their temper;
- counsel in a courtroom may get very close to officers to intimidate them. The officers' best response is to stand their ground and avoid the natural tendency to pull backwards;
- officers should always address their remarks to the judge, jury or member of an admissibility hearing, even if counsel tries to get an officer to address their remarks to someone else;
- when officers are leaving the witness box or chair, they should remain impassive and not demonstrate relief or despair. Any expression of emotion could subtly influence the decision of a jury, judge or member of an admissibility hearing.

28 Procedure: Handling alleged war criminals

An officer might receive information that a foreign national, permanent resident or refugee protection claimant is a war criminal. For information about:

- how to identify war criminals, refer to [ENF 18](#), War Crimes and Crimes Against Humanity;
- establishing inadmissibility, refer to [ENF 1](#), Inadmissibility;
- determining eligibility of a refugee protection claimant, refer to [ENF 18](#), War Crimes and Crimes Against Humanity;
- reporting an alleged war criminal, refer to [ENF 18](#), War Crimes and Crimes Against Humanity; or
- intervention procedures, refer to [ENF 24](#), Ministerial Interventions.

29 Procedure: Requesting the Minister's opinion

Information may come to the attention of an officer during an investigation that could warrant the collection of information to initiate a Minister's opinion under the Act. A Minister's opinion can be issued in two circumstances:

- against a refugee protection claimant where they have been convicted outside of Canada of an offence punishable by at least 10 years imprisonment as described in [A101\(2\)\(b\)](#). If a Minister's opinion is issued for danger to the public in conjunction with serious criminality outside of Canada, the claim for refugee protection will be ineligible to be referred to the Refugee Protection Division (RPD) under [A101\(1\)\(f\)](#); or
- against a protected person or a person who is recognized as a Convention Refugee by another country and is inadmissible on grounds of serious criminality as described in [A115\(2\)\(a\)](#). If a Minister's opinion is issued for danger to the public in conjunction with serious criminality, this person will not be eligible for non-refoulement provisions in [A115\(1\)](#) and would be subject to removal to their country of persecution.

For further information on procedures for requesting a Minister's opinion, refer to [ENF 28](#), section 7.2.

30 Procedure: Intervention, cessation and vacation

An officer may have to deal with information on intervention, cessation and vacation procedures to protect the integrity of the Canadian refugee protection system.

30.1 Preliminary investigation procedures

During the process of a refugee protection hearing or after a person has been conferred refugee protection status, information may come to an officer's attention that could initiate investigation for an intervention, cessation and vacation hearing. After this information is brought to the attention of the hearings officer, the latter decides if the evidence should be brought to the attention of the Immigration and Refugee Board (IRB).

In some cases, an officer may receive information that could impact the decision of the Refugee Protection Division (RPD). If an officer becomes aware of new information of any inadmissibility under sections [A34](#) to [A37](#) or where there is information indicating a contradiction in any document or statement of the refugee, the officers should:

- conduct an interview with supporting notes, see [section 14.2](#) above, and prepare a statutory declaration, see [section 14.6](#) above, recording information or identifying documents received;
- seize any relevant documents under [A140\(1\)](#) that could be used as evidence;
- create a general information Non-Computer Based entry (NCB) in FOSS and update the National Case Management System (NCMS) to indicate that the case is under investigation and the reasons for the investigation (i.e., allegations that may give rise to intervention, cessation or vacation proceedings exist and the case is under investigation);
- contact the hearings officer to discuss the case details;
- at the request of the hearings officer, conduct a further investigation to collect additional evidence, if necessary;
- return the file to the appropriate CBSA office for further investigation; and
- after the investigation is complete, transfer the file and the supporting documentation to the hearings officer with a memorandum outlining an overview of the case details.

30.2 Intervention

During a refugee protection hearing, a hearings officer may intervene in exclusion and cessation cases. For information on the intervention process, refer to [ENF 24, section 5](#).

30.3 Cessation of refugee protection status

The *Convention Relating to the Status of Refugees* recognizes that, in certain circumstances, a person who has been previously determined to be a Convention refugee will no longer be in need of protection. For information on circumstances when a person ceases to be a Convention refugee, refer to [ENF 24, section 5](#) on cessation.

30.4 Vacation of refugee protection status

An officer should bring to the attention of a hearings officer information that may establish that grounds to vacate a person's refugee status exist. The principle behind the vacation provision under [A109\(1\)](#) is to nullify the refugee protection status to persons whose claims were based on fraud or misrepresentation. For information on vacation proceedings before the Refugee Protection Division refer to [ENF 24, section 5](#).

Specific to vacation proceedings, the officer should keep the following principles in mind:

- the strongest type of evidence relating to fraud or misrepresentation will usually deal with issues such as identity, nationality and country of residence, indicating that the claim is a complete fabrication rather than being based on a few incorrect details; and
- misrepresenting or withholding material facts relating to a refugee protection claim could have been exercised by the claimant or by another person.

31 Procedure: Information exchange with other parties

Government departments and agencies may collect personal information only when it relates directly to a program or activity of that organization. The information has to be collected from the individual, whenever possible and the individual must be informed of the purpose for which it is being collected at the time that it is collected. Personal information about an individual can only be disclosed to someone else with that individual's consent, or when one or more of the criteria set out in the *Privacy Act* are met. Under paragraph 8(2)(a) of the *Privacy Act*, personal information may legally be disclosed if the information is supplied to accomplish the purpose for which the information was originally collected, or for a use consistent with that purpose. This is commonly referred to as the consistent-use provision. If an officer has any doubts about requests for personal information, they should consult a regional privacy coordinator or public-rights officer. See [IN 1 Overview on Information-Sharing](#) for more information on information exchange.

32 Procedure: Legality of actions

If an officer has questions concerning the legality of their actions during investigation and arrest procedures, the officer should contact their manager or supervisor who can then make a request for assistance from the Department of Justice.

Appendix A – Authorization to have the authority and powers of a peace officer

Domestic regions

- Hearings Officer
- Immigration Examining Officer
- Detention officer – Law enforcement
- Law enforcement officer
- Law enforcement officer – POE
- Expertise officer
- Expulsion officer
- Immigration Officer
- Intelligence Analyst
- Local Intelligence Officer
- Senior Immigration Examining Officer
- Regional Intelligence Officer
- Intelligence officer
- Senior advisor – Hearings

- Manager
- Manager Detention Operations
- Hearing officer
- Immigration control officer
- Detention officer – Law enforcement
- Enforcement officer
- Enforcement officer – POE
- Immigration Examination Officer
- Immigration officer
- Senior Immigration control officer
- Senior advisor – Hearings
- Director
- Director, Operations
- Duty Manager, PIA
- Director General, Atlantic
- Director General, B.C./Yukon
- Director General, Ontario
- Director General, Prairies and Northern Territories
- Director General, Quebec
- Manager
- District Manager
- Manager Detention Operations
- Site Manager
- Operations Manager
- Regional Manager
- Regional Intelligence Officer
- Regional Manager
- Supervisor, Inland
- Immigration Investigator
- Zone Manager

Appendix B – Letter to compel persons to appear for examination

Date

File

Client name

Address

Subject: Examination by the Canada Border Services Agency
Examination by Citizenship and Immigration Canada

Mr./Mrs./Ms.

In order to process your application under the *Immigration and Refugee Protection Act* (IRPA), we request that you appear for an examination by the Canada Border Services Agency (CBSA)/Citizenship and Immigration Canada (CIC) [To modify according to work location].

Please note that pursuant to Section 16(1) and 16(1.1) of the IRPA you are legally **obligated to appear for this examination and answer all questions truthfully.**

You are required to present yourself at:

Address
Date
Time

If you do not appear for this examination or you do not answer truthfully all questions put to you during this examination, appropriate action under the IRPA may be taken against you.

Please bring this letter along with the following documents to the examination:

Yours truly

Appendix C – Letter to compel foreign nationals to appear for an interview with CSIS

Date
File
Client name
Address
Subject: Interview with the Canadian Security Intelligence Service

Mr./Mrs./Ms.

In order to process your application under the *Immigration and Refugee Protection Act* (IRPA), we request that you appear for an interview that will be conducted by the Canadian Security Intelligence Service (CSIS). Pursuant to section 15 of the *Canadian Security Intelligence Service Act*, CSIS is authorized to conduct investigations for the purpose of providing advice to Ministers relating to security matters relevant to the administration of IRPA.

Please note that pursuant to Section 16(2.1) of the IRPA you are legally **obligated to appear for this interview and answer all questions truthfully.**

You are required to present yourself at:

Address
Date
Time

If you do not appear for this interview or you do not answer truthfully to all questions put to you during this interview, appropriate action under the *IRPA* may be taken against you.

Please bring this letter along with the following documents to the interview:

Yours truly